No. 3866

United States

Circuit Court of Appeals

For the Ninth Circuit.

HARRY MABRY,

Appellant,

vs.

GEORGE D. BEAUMONT, as United States Marshal, for the Territory of Alaska, First Division,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

WICKERSHAM & KEHOE, Juneau, Alaska, Attorneys for Appellant.

ARTHUR G. SHOUP, U. S. Attorney, Juneau, Alaska, Attorney for Appellee.

In the District Court for the Territory of Alaska, Division Number One, at Juneau.

No. 2169—A

HARRY MABRY,

Plaintiff,

vs.

GEORGE D. BEAUMONT, United States Marshal,

Defendant.

Petition for Writ of Habeas Corpus.

To Honorable THOMAS M. REED, Judge of the District Court of the Territory of Alaska, First Division.

Comes now your petitioner, Harry Mabry, and presents this his petition, and for cause of action against the defendant says:

I.

That your petitioner, Harry Mabry, is imprisoned and restrained in his liberty, at the Federal Jail in the City of Juneau, Alaska, and within the jurisdiction of this court, by George D. Beaumont, the United States Marshal for the Territory of Alaska, First Division, having charge thereof.

That your petitioner is not properly imprisoned or restrained by virtue of the legal judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution regularly and lawfully issued upon such judgment or decree; that he has not been committed and is not detaind by virtue of any judgment, decree, final order or process issued by a court or Judge of the United States, in a case where such courts or Judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of legal proceedings in such a court; nor is he committed or detained by [1*] virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction, or the final order of such a tribunal made in the special proceedings instituted for any cause except as herein set forth.

II.

That petitioner is not imprisoned or restrained by virtue of any order, judgment or process specified in section 1399, Compiled Laws of Alaska, 1913.

III.

That the cause and pretense of such imprisonment or restraint, according to the best knowledge or belief of the petitioner, is that plaintiff was complained against by H. D. Stabler, Special Assistant United States Attorney, before R. W. DeArmond, Commissioner and *Ex-officio* Justice of the Peace

*Page-number appearing at foot of page of original certified Transcript of Record.

in and for Sitka Precinct, in the Territory of Alaska, First Division, for an alleged violation of the Alaska Bone Dry Act, Pub. No. 308, by charging this plaintiff therein with possessing intoxicating liquor in said precinct on December 1st, 1921. That said complaint, a full, true and correct copy of which is hereto attached and made a part of this petition as fully as if repeated herein, was filed with the said Commissioner at Sitka, Alaska, on January 9th, 1922. That upon receiving and filing said complaint the said Justice of the Peace issued, under his hand and seal, a warrant based wholly upon the charge therein, for the arrest of this petitioner, and delivered said warrant to the Deputy United States Marshal at Sitka, Alaska, and the said Deputy Marshal, on the 9th day of January, 1922, at Sitka, Alaska, took this petitioner into custody and brought him before the said DeArmond, as as such Commissioner and Justice of the Peace at his office in Sitka, Alaska, on said day. That a full, true and correct copy of said warrant is hereto attached and made a part of this petition.

That said DeArmond, aforesaid, thereupon issued under [2] his hand and seal an order for the empanelling of a jury to try this petitioner upon the charges so contained in the said complaint and warrant, and placed said order in the hands of said Deputy United States Marshal for service. Whereupon the said Deputy Marshal summoned twelve persons who appeared in said court for such purpose, and said Deputy Marshal thereupon made return to said court of such service; that a full, true

and correct copy of said order for jury and the return of said Deputy Marshal's acts thereunder are attached to this petition and made a part thereof.

That thereupon the said DeArmond, as aforesaid, issued under his hand and seal a subpoena commanding five certain persons named therein to appear before the Commissioner's Court of the United States for the District of Alaska, First Division, Sitka Precinct, immediately to testify as witnesses against this petitioner as defendant in that action; and the said Deputy Marshal did so subpoena said persons, who did appear before said court at the time and place mentioned in said subpoena and did testify in said action in said court; that a full, true and correct copy of the said subpoena and the return thereon are attached to this petition as a part thereof.

That this petitioner appeared before said court under the compulsory power of said warrant and in charge of said Deputy Marshal, and being asked if he was guilty or not guilty of the matters charged in the said complaint, answered that he was not guilty; whereupon the said court empanelled the said twelve persons into a jury and proceeded to try the said issue so charged against this petitioner in said complaint. The five witnesses mentioned were called and testified in support of the allegations of said complaint and this petitioner did not introduce any evidence. Thereupon the said twelve persons acting as a jury returned into said court a verdict signed by each of said twelve persons, a

full, true and correct copy of which is attached to this petition and made a part thereof. [3]

Thereupon the said Commissioner and *Ex-officio* Justice of the Peace, R. W. DeArmond, as such officer, on January 9th, 1922, made and entered a false and pretended judgment in said cause, without authority or jurisdiction to do so in law, a full, true and correct copy of which said false and pretended judgment is attached to this petition and verified and made a part hereof as fully as if so copied herein at this place; and that said Court at the time and place did make another false and pretended judgment in said cause by writing the same into and as a part of his docket entries in said cause, without authority or jurisdiction so to do, in law or at all, a full, true and correct copy of which said second judgment is included in the copy of the docket entries so made by said DeArmond, as such officer, on said January 9th, 1922, in said cause, and which said full, true and correct copy of said second judgment so entered without authority or jurisdiction in law so to do is attached to this petition and made a part hereof as fully as if copied herein at this place.

Whereupon the said Deputy Marshal at Sitka, Alaska, on said January 9th, 1922, acting under said two false and pretended judgments, and not otherwise, took this petitioner into his custody, and thereupon forcibly and in violation of this petitioner's rights under the Constitution of the United States, and in violation of the laws thereof in force in Alaska, restrained and

imprisoned this petitioner first in the jail at Sitka, Alaska, under charge of the said United States Marshal, defendant herein, from whence he was by the said defendant and his official deputies forcibly removed from said jail at Sitka, to the town of Juneau, Alaska, in custody of the said Marshal, defendant, restrained of his liberty, and confined as a prisoner in the federal jail at Juneau, Alaska, under charge of the United States Marshal, defendant herein, under the pretended authority of the said two false and illegal judgments so rendered without jurisdiction or authority of law, by said DeArmond as such [4] Commissioner and Justice of the Peace.

That while so illegally confined in violation of law in said jail, by the said defendant, and for the purpose of procuring petitioner's liberty, this petitioner gave notice of appeal from the pretended and false judgments of the said Justice Court so pretending to find him guilty of the crime charged in said judgments, to the District Court of the Territory of Alaska, First Division, holding terms at Juneau, Alaska, which notice was served and filed in said justice court at Sitka, Alaska, on the 14th day of January, 1922, and petitioner at the same time and place also made, signed and filed a bond on appeal and for stay of proceedings and for the payment of the costs thereof, a full, true and correct copy of which notice of appeal and bond are attached to this petition and verified herewith and made part hereof as fully as if copied in full at this place in this petition. That said

notice of appeal and bond were filed in said cause by said DeArmond, on the 14th day of January, 1922, and approved, and thereupon of that day the said DeArmond, as such Commissioner and *Ex-officio* Justice of the Peace, in said precinct, made, signed and entered in the record of the proceedings in said cause and order reciting that said petitioner (defendant in that case) having appealed from said judgment and given sufficient bail to abide and perform the judgment of the appellee court, and commanding the United States Marshal, the defendant herein, to discharge this petitioner from custody, which the said Marshal did upon said order; that a full, true and correct copy of said order of discharge is hereto attached and made a part hereof as fully as if copied herein at this point.

That the said R. W. DeArmond, as such Commissioner and *Ex-officio* Justice of the Peace in and for said Sitka Precinct, aforesaid, in the trial of said cause made, kept and signed minutes of the proceedings in the said trial in his official docket, and hereto attached is a full, true and correct copy of all docket [5] entries made by said officer on the trial of this petitioner in said Commissioner's Court, which said entries are hereby made a part of this petition as fully as if copied herein.

That on the 8th day of March, 1922, the United States Attorney filed in the District Court in this Division, in this cause, there on said appeal, a motion to dismiss the appeal theretofore allowed by the said Commissioner and *Ex-officio* Justice of

the Peace, from his said false and pretended judgment of conviction against this petitioner in said cause, and served a copy of said motion to dismiss and a notice of hearing thereon upon the attorneys of record for this petitioner, for a hearing of said motion before this District Court at Juneau, Alaska, on the 11th day of March, 1922; that a full, true and correct copy of the said motion and notice are attached hereto and made a part of this petition.

That thereafter and on the 14th day of March, 1922, this petitioner, by his attorneys of record, filed in this court and cause, a motion for permission to file, and with it filed, an undertaking on appeal for the payment of all costs and disbursements that may be awarded against the defendant, this petitioner, on the appeal of the said cause from the said Commissioner's Court to the District Court, with sufficient sureties, a full, true and correct copy of which said bond and motion are attached to this petition and made a part thereof.

That on the 16th day of March, 1922, the Judge of this court made an order denying this petitioner permission to file the bond last named, to which petitioner excepted and exception allowed, a full, true and correct copy of said order is hereto attached and made a part of this petition.

That thereafter and on the 16th day of March, 1922, the Judge of the District Court of the Territory of Alaska, Division Number One, before whom the proceedings in the said case against this petitioner were then pending, made, signed and caused

the same [6] to be entered of record, an order dismissing the appeal of this petitioner (defendant) from the false and pretended judgments of conviction so made and entered against the defendant (this petitioner) by the said Commissioner and *Ex-officio* Justice of the Peace, in the said cause in the Sitka Precinct, as aforesaid, a full, true and correct copy of which order of dismissal is hereto attached and made a part of this petition as fully as if written herein.

That thereafter and on the 16th day of March, 1922, the Judge of this court made, signed and entered of record in this court, an order that a bench warrant issue out of this court directing the United States Marshal, defendant in this petition, to take this defendant into his custody; that a full, true and correct copy of said order for bench warrant is hereto attached and made a part of this petition.

Thereafter and on the 24th day of March, 1922, the said United States Marshal, George D. Beaumont, defendant herein, took this petitioner into his custody and ever since then has had and now restrains and confines petitioner in the jail belonging to the United States at Juneau, Alaska, under a pretended authority to so confine, restrain and imprison this petitioner under and in compliance with the said false and pretended judgment so claimed to have been made and entered in said Commissioner's Court by said R. W. DeArmond, *Ex-Officio* Justice of the Peace in and for Sitka Precinct, Alaska, on said 9th day of January, 1922, as herein above al-

leged; and upon no other authority except as hereinabove set out and alleged.

IV.

That the said imprisonment, detention, confinement and restraint are illegal, and that the illegality thereof consists in this, to wit: That the said R. W. DeArmond, Commissioner and *Ex-officio* Justice of the Peace in said Sitka Precinct, Alaska, aforesaid, had no jurisdiction or authority in law or otherwise, to render and make the pretended judgment so by him made and rendered [7] in said case against the defendant (petitioner) on said January 9th, 1922, as aforesaid, because the said judment is not based upon any crime defined by or known to the laws of the United States or the Territory of Alaska, and the pretended crime stated therein is not a crime known to or defined by said law or any law. (2) Because said pretended judgment of January 9th, 1922, as aforesaid, being void for want of jurisdiction, and being so made in excess and outside of the jurisdiction of said Justice Court, as aforesaid, all subsequent proceedings of said Justice Court, and of the District Court, based thereon, were each without jurisdiction and wholly void. (3) Because the said pretended judgment of January 9th, 1922, as aforesaid, being void for want of and in excess of the jurisdiction of said Justice Court, all subsequent proceedings *proceedings* thereunder, both in said Justice Court and in this District Court, and the imprisonment and restraint of this defendant (petitioner) were and now are in violation of law and of this petitioner's

rights under the Fifth Amendment to the Constitution of the United States. (4) Because the complaint in said case against this defendant (petitioner) made and verified on said 9th day of January, 1922, by H. D. Stabler, Special Assistant United States Attorney, was so made in violation of the provisions of Section 28 and other provisions of the Act of Congress entitled "An Act to prohibit the manufacture or sale of alcoholic liquors in the territory of Alaska, and for other purposes," approved February 14th, 1917, 39 Stat. L., page 903, and was made without authority of law and in violation of said law and did not state facts sufficient to constitute a crime, or to give the said Justice Court jurisdiction to try and sentence this petitioner as in said record stated. (5) That the pretended warrant so issued by the said Commissioner and *Ex-fficio* Justice of the Peace in the Sitka Precinct, as aforesaid, on said January 9th, 1922, for the arrest of this petitioner (defendant) and upon which he was so arrested and restrained of his liberty, and so attempted to be [8] brought within the jurisdiction of the said Justice Court, was and is void and illegal in this: that it is in direct violation of Section 2384, Compiled Laws of Alaska, 1913, because it did not and does not now state or designate any crime therein alleged to have been committed by this petitioner, and because the said Deputy Marshal had no authority thereby to arrest or detain or imprison this petitioner (defendant) and his said arrest and imprisonment thereunder and his detention in said court were illegal because

said warrant was void and in violation of law. (6) That the pretended verdict rendered by the jury against this defendant (petitioner) in said Justice Court was and is null and void because it does not find the defendant guilty of any crime, and the same did not afford any jurisdiction to the pretended judgment and sentence so entered by the said justice of the peace thereon. (7) Because the pretended judgment so entered by the said Justice of the Peace in the case against this defendant (petitioner) as aforesaid, was null and void for the further reason that it provided that this petitioner (defendant) should be imprisoned in the jail at Sitka until the costs of said case were paid; and that part of the said pretended judgment providing for his said imprisonment for costs has been imposed upon this petitioner (defendant) and said judgment is wholly null and void for that reason also. (8) Because the docket entries in the case against the petitioner (defendant) kept by the said Justice and made a part of this petition show that the pretended crime charged against this petitioner (defendant) and upon which the jury so returned said verdict, and the Justice so rendered said pretended judgment and sentence, was not a crime, and that the said court had no jurisdiction to render any judgment and sentence against this petitioner (defendant) thereon or at all. (9) Because it appears on the face of the pretended judgment aforesaid, entered by the Justice in said Justice Court on January 9th, 1922, against petitioner [9] (defendant) that said Justice had no jurisdiction

or authority to sentence petitioner (defendant) to be imprisoned in jail four months, and an additional 300 days, as therein stated, because said periods exceed the jurisdiction of said Justice of the Peace to impose imprisonment, and said sentence was null and void. (10) Because it appears on the face of the order of the District Court in this case dismissing defendant's (petitioner's) appeal from the said Justice Court to the said District Court, as herein described, was without authority of law, and the affirmance of the said pretended judgment of the said Justice of the Peace of January 9th, 1922, as aforesaid, was without jurisdiction and void, and all proceedings and orders entered in said cause in said District Court, as aforesaid, were null and void and without jurisdiction. (11) That the order of said District Court so made on March 16th, 1922, directing the issuance of a bench warrant for the arrest and imprisonment of this petitioner (defendant) was in excess of the jurisdiction of the said District Court and its Judge, and null and void, and the arrest and imprisonment of this petitioner (defendant) being made and done under that warrant, was so done without the jurisdiction and is null and void. (12) That the present imprisonment of this petitioner under said pretended judgment of January 9th, 1922, and the said pretended bench warrant so issued by said District Court upon which this petitioner was so arrested on March 24th, 1922, and is now imprisoned, was and is illegal and without jurisdiction or authority of law, and the said United States Marshal, defendant

herein, is wholly without authority of law in restraining this petitioner and imprisoning him as aforesaid.

V.

That the legality of the imprisonment or restraint of this petitioner has not been already adjudged upon a prior writ of *habeas corpus,* by this or any other court, or at all.

WHEREFORE your petitioner prays that a WRIT OF HABEAS CORPUS [10] may be granted and issued out of this court, directed to the said George D. Beaumont, United States Marshal, as aforesaid, commanding him to bring and have the body of your petitioner before your Honor at the time and place therein specified, to do and receive what shall then and there be commanded by your Honor concerning the said petitioner together with the time and cause of the detention of your petitioner, together with said writ; and that upon said hearing this petitioner be restored to his liberty.

HARRY MABRY,
Petitioner.

Territory of Alaska,
Juneau Precinct,—ss.

Harry Mabry, being first duly sworn, deposes and says: That he is the petitioner mentioned in the foregoing petition; that he has heard the petition read, knows the contents thereof and believes the statements of facts therein to be true.

HARRY MABRY,
Petitioner.

Subscribed and sworn to before me this 25th day of March, 1922.

[Notarial Seal] J. W. KEHOE,
Notary Public for Alaska.

My commission expires Sept. 15, 1925.

WICKERSHAM & KEHOE,
Attorneys for Petitioner. [11]

Filed in the District Court, District of Alaska, First Division. Jan. 18, 1922. John H. Dunn, Clerk. By L. E. Spray, Deputy.

[Caption and Title.]

Complaint for Violation of the Alaska Bone Dry Act—Pub. No. 308.

Harry Mabry is accused by H. D. Stabler in this complaint of the crime of POSSESSING INTOXICATING LIQUOR, committed as follows, to wit: The said Harry Mabry in the District of Alaska, and within the jurisdiction of this court, did wilfully and unlawfully, on the 1st day of December, 1921, at Sitka, Alaska, and in S. S. Thornton's residence near the Russian Greek Church at Sitka, Alaska, then and there have in his possession intoxicating liquor, to wit, moonshine whiskey, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

H. D. STABLER,
Asst. U. S. Attorney.

United States of America,
Territory of Alaska,—ss.

I, H. D. Stabler, being first duly sworn, depose and say that the foregoing complaint is true.

H. D. STABLER.

Subscribed and sworn to before me this 9th day of January, 1922.

[Seal] R. W. DeARMOND,
Ex-officio Justice of the Peace. [12]

In the Court of the United States Commissioner and *Ex-officio* Justice of the Peace for the Sitka Precinct, District of Alaska.

Bench-Warrant.

In the Name of the United States of America, to the United States Marshal of the District of Alaska, or any Deputy, GREETING:

Information upon oath having been this day laid before me that the crime of violating the Alaska Bone Dry Act, Pub. No. 308, has been committed, and accusing Harry Mabry thereof;

YOU ARE, THEREFORE, HEREBY COMMANDED forthwith to arrest the above-named Harry Mabry and bring him before me at Sitka, or, in case of my absence or inability to act, before the nearest or most accessible magistrate.

Dated at Sitka, Alaska, this 9th day of January, 1922.

[Seal] R. W. DeARMOND,
United States Commissioner and *Ex-officio* Justice of the Peace.

(RETURN ON ABOVE WARRANT.)

United States of America,
District of Alaska,
Division No. 1,—ss.

I hereby certify that I received the within warrant at Sitka, Alaska, on the 9th day of January, 1922, and that I served the same at Sitka, Alaska, on the 9th day of January, 1922, by taking the within named Harry Mabry into custody, and now produce him in court this 9th day of January, 1922.

G. D. BEAUMONT,
U. S. Marshal.
By S. G. Thomas,
Deputy. [13]

[Caption and Title.]

Order for Jury.

In the Name of the United States of America, to the United States Marshal for the First Division, Territory of Alaska, or Any Deputy, GREETING:

WHEREAS there has been a complaint duly sworn to, filed in the above-entitled court, and the above-named defendant having been brought before the above-entitled court to answer said com-

plaint, and the said complaint having been read and explained to him, and said person having entered a plea of "Not Guilty" and further requested that he be tried by a jury.

YOU ARE THEREFORE, HEREBY COMMANDED to summon twelve men with the necessary qualifications to appear at the courtroom of the above-entitled court at the hour of 11 A. M. Monday, the 9th day of January, 1922, to act as a jury in said cause.

[Seal] R. W. DeARMOND,
United States Commissioner and *Ex-officio* Justice of the Peace.

(RETURN ON JURY ORDER.)

I hereby certify that I received the within Jury Order at Sitka, Alaska, on the 9th day of January, 1922, and that I served the same on the 9th day of January, 1922, at Sitka, Alaska, by summoning the following to act as jurors in said above-entitled case: E. W. Merrill, D. R. Jannings, Felix Beauchamp, Sam Butts, C. Jay Mills, John Sarvela, P. Threischield, C. C. Georgeson, Donald McGraw, John Gamble, Henry Woodruff, R. A. Buchanan.

Dated Jany. 9th, 1922.

GEO. D BEAUMONT,
U. S. Marshal.
By S. G. Thomas,
Deputy. [14]

Justice Court for the Sitka Precinct, Territory of Alaska, Division Number One.

United States of America,
Territory of Alaska,—ss.

Subpoena.

To Mrs. Elizabeth Hoolywood, Mrs. Bessie Coates, Mrs. S. S. Thornton, Mr. S. S. Thornton and Geo. B. Rice, GREETING:

YOU ARE HEREBY COMMANDED to appear before the Commissioner's Court of the United States for the District of Alaska, First Division, Sitka, Precinct, at the Commissioner's Office at Sitka in said Division on Monday the 9th day of January, 1922, immediately at —— o'clock — M. of that day to testify as a witness on behalf of the plaintiff in the case of United States vs. Harry Mabry, AND HEREOF FAIL NOT.

WITNESS my hand and seal of this court at Sitka, in said District and Precinct this 9th day of January, 1922.

[Seal] R. W. DeARMOND,
United States Commissioner and *Ex-officio* Justice of the Peace.

(RETURN ON SUBPOENA.)

United States of America,
Territory of Alaska,—ss.

I HEREBY CERTIFY that I received the within Subpoena on the 9th day of January, 1922, at Sitka, Alaska, by reading and showing the original and delivering a ticket containing the substance thereof

to each of the within named witnesses, Mrs. Elizabeth Hollywood, Mrs. Bessie Coates, Mr. S. S. Thornton, Mrs. S. S. Thornton personally.

Dated at Sitka, Alaska, Jany. 9th, 1922.

S. G. THOMAS,
Deputy U. S. Marshal. [15]

[Caption and Title.]

Jury Verdict.

We, the undersigned jurors in the above-named matter, being duly subpoenaed and empannelled, and after hearing the evidence presented and giving sincere consideration to the same, find the defendant Harry Mabry GUILTY.

E. W. MERRILL.
R. A. BUCHANAN.
D. R. JENNINGS.
D. R. McGRAW.
C. C. GEORGESON.
C. JAY MILLS.
JOHN E. GAMBLE.
JOHN N. SARVELA.
P. TREISCHIELD.
H. M. WOODRUFF.
F. BEAUCHAMP.
SAM BUTTS. [16]

[Caption and Title.]

Violation of Alaska Bone Dry Law or Pub. No. 308.

Judgment.

On the 9th day of January, 1922, the above-named Harry Mabry having been brought before me, R. W. DeArmond, a U. S. Commissioner and *Ex-officio* Justice of the Peace at Sitka, Alaska, in a criminal action for the crime of violating the Alaska Bone Dry Law and the said Harry Mabry having pleaded not guilty and been duly tried by jury trial and upon such trial Harry Mabry having been duly convicted, I have adjudged that he be imprisoned in the jail at Sitka for four months and that he pay the costs of the action taxed at Ninety-three and 55/100 Dollars, and that he pay a fine of Six Hundred Dollars, and be imprisoned in such jail until such fine and costs be paid, not exceeding Three Hundred days.

A TRUE COPY OF THE ORIGINAL ENTRY OF JUDGMENT.

IN WITNESS WHEREOF I have set my hand at Sitka, Alaska, this 9th day of January, 1922.

[Seal] R. W. DeARMOND,
U. S. Commissioner and *Ex-officio*
Justice of the Peace.

[Endorsed]: United States of America, District of Alaska,—ss. I certify that I received the within committment on the 9th day of January, 1922, and executed the same on the 9th day of January, 1922,

by delivering the within named defendant to the jailer of the U. S. Jail, at Sitka, Alaska.

GEO. D. BEAUMONT,
U. S. Marshal.
By S. G. Thomas,
Deputy U. S. Marshal. [17]

[Caption and Title.]

Notice of Appeal.

To the United States Attorney for the First Division, Territory of Alaska:

You will please take notice, that the defendant in the above-entitled action appeals to the District Court, 1st Div. Territory of Alaska, from the judgment of the above-entitled court rendered on the 9th day of January, 1922, wherein the said defendant was convicted of a violation of the Alaska Bone Dry Law, to wit, the possession of intoxicating liquor in violation of the said law, and was convicted and sentenced by the above court to pay a fine of $600.00 and to serve three months confinement in the jail at Juneau, Alaska.

JAMES WICKERSHAM,
J. W. KEHOE,
Attorney for Defendant.

Service of a true, full and correct copy of the within notice of appeal is hereby acknowledged this 11th day of January, 1922.

A. G. SHOUP,
United States Attorney. [18]

[Caption and Title.]

Bail on Appeal.

A judgment of the above-entitled court having been given on the 9th day of January, 1922, whereby Harry Mabry, the defendant herein, was condemned to pay a fine of $600.00 and to serve three months in the jail at Juneau, Alaska, and he having appealed from the said judgment and been duly admitted to bail in the sum of Twelve Hundred Dollars.

We, W. P. Mills and A. Murray, both of Sitka, Alaska, hereby undertake that the above-named Harry Mabry shall in all respects abide by and perform the orders and judgments of the Appellate Court upon the appeal, or if he shall fail so to do in any particular, that we will pay to the United States the sum of Twelve Hundred Dollars.

W. P. MILLS.
A. MURRAY.

United States of America,
Territory of Alaska,
Sitka Precinct,—ss.

We, W. P. Mills and A. Murray, being first duly sworn each for himself and not one for the other, deposes and says:

That I am a citizen of the United States of America; that I am over the age of 21 years; that I am not a councellor or attorney, marshal, clerk of any court or other officer of any court; that I am worth the sum specified in the within Bond on

Appeal, exclusive of property exempt from execution and over and above all just debts and liabilities.

W. P. MILLS.
A. MURRAY.

Taken and acknowledged before me this 14 day of January, 1922.

[Seal] R. W. DeARMOND,
Justice of the Peace.

Approved this 14 day of January, 1922.

[Seal] R. W. DeARMOND,
U. S. Commissioner *Ex-officio* Justice of the Peace. [19]

In the United States Commissioner's *Ex-officio* Justice Court, Sitka Precinct, Judicial Division Number One, Territory of Alaska.

To the United States Marshal, First Judicial Division, Territory of Alaska.

Order Releasing Defendant from Custody.

Harry Mabry, who is detained by you in execution of a judgment whereby he is condemned to serve an imprisonment in the Juneau Jail for a period of four months and that he pay the costs of this action taxed at Ninety-three and 55/100 ($93.55) Dollars, and that he pay a fine of Six Hundred ($600.00) Dollars, and be imprisoned in such jail until such fine and costs be paid, not exceeding three hundred days, having appealed

from said judgment and given sufficient bail to abide and perform the judgment of the Appellee Court, you are commanded forthwith to discharge him from your custody.

January 14th, 1922.

[Seal] R. W. DeARMOND,
United States Commissioner *Ex-officio*
Justice of the Peace, Sitka Precinct,
Territory of Alaska. [20]

[Caption and Title.]

Docket Entries.

Complaint made by H. D. Stabler, Ass't U. S. Attorney.

Offence charged Viol. Alaska Bone Dry Act—Pub. No. 308.

Offence committed at Sitka on Dec. 1, 1921.

Place of arrest—Sitka.

Disposition of case—Defendant tried by jury, convicted and sentenced.

1922.

Jan. 9. Complaint sworn to and filed by H. D. Stabler, Assistant United States Attorney charging Harry Mabry with Violating the Alaska Bone Dry Act, Pub. No. 308.

" 9. Warrant of arrest issued and placed with Deputy U. S. Marshal S. G. Thomas for service. Service was rendered and the warrant was returned and filed, being endorsed:

United States of America,
District of Alaska, Division No. 1,—ss.

I hereby certify that I received the within warrant at Sitka, Alaska, on the 9th day of January, 1922, *by taking the within named Harry Mabry into my custody,* and now produce him in court this 9th day of January, 1922.

GEO. D. BEAUMONT,
U. S. Marshall.
By S. G. Thomas,
Deputy.

" 9. Court convened at 9:30 o'clock A. M., defendant Harry Mabry present. The complaint was read to him and he informed as to his legal rights. A plea of "Not Guilty" was entered.

" 9. A jury order was issued and placed with Deputy Marshal S. G. Thomas for execution. The jury order was returned and filed, being endorsed:

"I hereby certify that I received the within jury order at Sitka, Alaska, on the 9th day of January, 1922, and that I served the same on the 9th day of January, 1922, by summoning the following to act as jurors in said above-entitled case; E. W. Merrill, D. R. Jennings, Felix Beauchamp, Sam Butts, C. Jay Mills, John Sarvela, P. Trieschield, C. C. Georgeson, Donald McGraw, John Gamble, Henry Woodruff and R. A. Buchanan.

Dated Jan. 9th, 1922.

GEO. D. BEAUMONT,
U. S. Marshal,
By S. G. Thomas,
Deputy.

" 9. A subpoena was issued for Mrs. Elizabeth Hollywood, Mrs. Bessie Coates, Mr. S. S. Thornton, Mrs. S. S. Thornton and George B. Rice to appear as witnesses on behalf of the plaintiff. The subpoena was placed in the hands of Deputy U. S. Marshal S. G. Thomas for service. Return was made and filed, being endorsed:

United States of America,
Territory of Alaska,—ss.

I hereby certify that I received the within subpoena on the 9th day of January, 1922, at Sitka, Alaska, *by reading and* showing the original and delivering a ticket containing the substance thereof to each of the within named witnesses personally.

Dated at Sitka, Alaska, Jan. 9th, 1922.

S. G. THOMAS,
Deputy U. S. Marshal. [21]

Jan. 9. Court convened to try this case at 11 o'clock A. M. January 9, 1922. Defendant Harry Mabry and his attorney Eiler Hanson present. Jury duly empanelled and sworn.

Witnesses for the plaintiff were sworn and their testimony taken.

Defendant presented no witnesses or evidence.

The attorneys in the case each presented their *their* argument to the jury.

After deliberation the jury returned a verdict of "Guilty."

In view of the evidence and the jury verdict, I have adjudged that Harry Mabry be imprisoned in jail for a period of four months and that he pay the costs of the action taxed at Ninety-three and 55/100 Dollars and that he pay a fine of Six Hundred Dollars and be imprisoned in jail until such fine and costs be paid, not to exceed three hundred days.

R. W. DeARMOND,
United States Commissioner
Ex-officio Justice of the Peace,
Sitka Precinct, Alaska.

" 14. Notice of appeal from judgment filed.

" 14. Bail bond filed and approved.

" 14. Order releasing defendant Harry Mabry from custody issued.

R. W. DeARMOND,
United States Commissioner
Ex-officio Justice of the Peace.

" 14. Transcript of docket and original papers mailed to the Clerk of the District Court, Juneau, Alaska.

R. W. DeARMOND,
United States Commissioner
Ex-officio Justice of the Peace,
Sitka Precinct, Alaska.

United States of America,
Territory of Alaska,
Precinct of Sitka,—ss.

I, R. W. DeArmond, United States Commissioner and *Ex-officio* Justice of the Peace, Sitka Precinct, First Judicial Division, Territory of Alaska, duly commissioned and sworn, hereby certify that the within is a true and correct transcript of all the docket entries in the matter of the United States versus Harry Mabry.

In witness whereof I hereunto set my hand and official seal at Sitka, Alaska, this 14th day of January, 1922.

[Seal] R. W. DeARMOND,
United States Commissioner and *Ex-officio* Justice of the Peace, Sitka Precinct, First Judicial Division, Territory of Alaska. [22]

[Caption and Title.]

Notice of Motion to Dismiss Appeal and Affirm Judgment.

To Harry Mabry the above-named defendant, and to Wickersham and Kehoe, at Juneau, Alaska, his attorneys of record:

Please take notice that I will call up the annexed motion to dismiss appeal and affirm judgment for hearing before the Honorable T. M. Reed, Judge of the above-entitled court, in the courtroom thereof, at the hour of 10 o'clock A. M. on the 11th day of March, 1922.

Dated at Juneau, Alaska, this 8th day of March, 1922.

A. G. SHOUP,
United States Attorney.

Service of a true, full and correct copy of the within notice of motion to dismiss appeal and affirm judgment is hereby acknowledged this 8th day of March, 1922.

J. W. KEHOE,
Attorneys for Defendant.

Filed in the District Court, District of Alaska First Division Mar. 8, 1922. John H. Dunn, Clerk. By ————, Deputy. [23]

[Caption and Title.]

MOTION TO DISMISS APPEAL AND AFFIRM JUDGMENT.

Comes now Arthur G. Shoup, United States Attorney for the First Division, District of Alaska, and appearing specially for the purpose of this motion only, moves the Court to dismiss the appeal of the above-named defendant taken from the United States Commissioner's Court for Sitka Precinct, Territory of Alaska, Division Number One, to the District Court, First Division, Territory of Alaska, and filed herein on the 18th day of January, 1922, and affirm the judgment of conviction of the said Commissioner's Court, which said judgment is as follows: That the above-named defendant pay a fine of $600.00 and to serve three months' confinement in the jail at Juneau, Alaska, for the following reasons:

1. That this Court has not jurisdiction of the pretended appeal for the reason that no undertaking for costs and disbursements has been given by the appellant in this case as required by Sections 2551 and 2552 of chapter 43 of the Compiled Laws of Alaska.
2. That no appeal has been taken in the manner required by chapter 43, Compiled Laws of Alaska, of appeals from Justice's Courts in criminal actions.

Dated at Juneau, Alaska, this 8th day of March, 1922.

H. D. STABLER,
Sp. Asst. United States Attorney. [24]

[Caption and Title.]

1536—B.

Praecipe for Subpoena In a Case (For Outside Districts).

The Clerk of said court will issue subpoena directed to the United States Marshal for the 1st Division, District of Alaska, for the following-named persons to appear before said Court, at the United States Court Rooms, in Juneau, at 9 o'closk A. M., on the 14th day of March, 1922, then and there to testify in behalf of the United States.

Names:

Bessie Coates.
Elizabeth Hollywood.
Stanley Thornton.
Mrs. Stanley Thornton.

This 12th day of January, 1922.

A. G. SHOUP,
U. S. Attorney.
By H. D. Stabler.

Filed in the District Court, District of Alaska, First Division. Jan. 12, 1922. John H. Dunn, Clerk. By L. E. Spray, Deputy. [25]

In the United States District Court for the District of Alaska, Division No. 1.

Office of U. S. Marshal, Juneau, Alaska. Received Jan. 12, 1922, Docket No. 11898, for service by Deputy Thomas.

United States of America,
Territory of Alaska,—ss.

Summons.

The President of the United States of America, to Bessie Coates, Elizabeth Hollywood, Stanley Thornton, Mrs. Stanley Thornton, GREETING:

You are hereby commanded to appear before the District Court of the United States, for the Territory of Alaska, at Juneau, in said District, on Tuesday the 14th day of March, A. D. 1922, at 10 o'clock A. M., of that day to testify as a witness on behalf of the plaintiff in the case of United States vs. Harry Mabry, 1536—B. HEREOF FAIL NOT.

Witness the Honorable T. M. REED, Judge of said Court, and the Seal thereof affixed at Juneau in said Territory, this 12th day of January, A. D. 1922.

[Seal] JOHN H. DUNN,
Deputy.
By L. E. Spray,
Clerk.

Filed in the District Court, District of Alaska, First Division, Jan. 16, 1922. John H. Dunn, Clerk. By L. E. Spray, Deputy. [26]

United States of America,
District of Alaska, Division No. 1,—ss.

I, S. G. Thomas, Deputy U. S. Marshal for Division No. 1, District of Alaska, hereby certify that I received the within summons on the 14th day of January, 1922, and personally served the same upon the hereinafter named defendants by delivering to and leaving with each of said defendants personally a copy of said summons.

Dated January 14th, 1922.

S. G. THOMAS,
Deputy U. S. Marshal.

Names of Witnesses Served:

Bessie Coates.
Elizabeth Hollywood.
Stanley Thornton.
Mrs. Stanley Thornton.

[Caption and Title.]

Motion for Permission to File Additional Bond for Costs and Disbursements.

Comes now the above-named defendant, by his attorney, J. W. Kehoe, and moves this Honorable Court for permission to file in this cause an additional bond for costs and disbursements that may be incurred on appeal of the said cause in the above-entitled court.

Dated this 14th day of March, 1922.

J. W. KEHOE,
Attorney for Defendant.

Service of a full, true and correct copy of the within motion is hereby acknowledged this 14th day of March, 1922.

A. G. SHOUP,
U. S. Attorney.

Filed in the District Court, District of Alaska, First Division, Mar. 16, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [27]

[Caption and Title.]

No. 1536—B.

Undertaking on Appeal.

WHEREAS, the above-named defendant, Harry Mabry, has appealed from a judgment rendered against him in the United States Commissioner's Court for the Sitka Precinct, First Division, Territory of Alaska, on the 9th day of January, 1922, wherein said defendant Harry Mabry was sentenced to pay a fine of Six Hundred Dollars and to serve four months' confinement in the jail at Juneau, Alaska, for a violation of the Alaska Bone dry Law, to wit, Possessing Intoxicating Liquor at Sitka, Alaska, on the 1st day of December, 1921, in violation of said Alaska Bone Dry Law, which is an "Act to prohibit the Manufacture and Sale of Alcoholic Liquors in the Territory of Alaska, and for other purposes," enacted by the Congress of the United

States and aproved February 14th, 1917; and said defendant Harry Mabry, having filed with the Clerk of the District Court for the First Division, Territory of Alaska, at Juneau, Alaska, a transcript of the papers and records of the said trial in the said Commissioner's Court for the said Sitka Precinct, according to law; and the defendant Harry Mabry having served notice of appeal upon the plaintiff herein in said cause, and having filed the original of said notice, with the proof of service endorsed thereon, with the United States Commissioner for Sitka Precinct aforesaid:

NOW, THEREFORE, Harry Mabry, defendant, and Emery Valentine, of Juneau, Alaska, do hereby Undertake that said Harry Mabry shall pay all costs and disbursements that may be awarded against him on the appeal of the above-entitled cause.

EMERY VALENTINE.

United States of America,
Territory of Alaska,—ss.

I, Emery Valentine, being first duly sworn, depose and say that I am a citizen of the United States of America, and a resident of the Territory of Alaska, and that I am not a councellor or attorney marshal, clerk of any court, or other officer of any court; that I am worth the sum of one thousand dollars over and above all just debts and liabilities and all property exempt from execution.

[Seal] EMERY VALENTINE.

Subscribed and sworn to before me this 14th day of March, 1922.

J. W. KEHOE.

Approved as to the Sufficiency of Bond.

_____,

Judge, District Court.

Receipt of true copy acknowledged this 14th day of March, 1922.

LESTER O. GORE,
Asst. U. S. Atty.

Filed in the District Court, District of Alaska, First Division. Mar. 14, 1922. John H. Dunn, Clerk. By L. E. Spray, Deputy. [28]

[Caption and Title.]

Order Denying Motion for Permission to File Additional Bond for Costs and Disbursements.

This cause having come on to be heard on motion of J. W. Kehoe, attorney for the defendant herein, for permission to file an additional bond for costs and disbursements that might be incurred in the appeal of this cause in the above-entitled court, and the bond having been presented to the court on the 14th day of December, 1922, and the Court having read and considered the motion aforesaid—

IT IS ORDERED that the motion of defendant to file an additional bond for costs and disbursements aforesaid, be and the same is hereby denied as of the date of March 14th, 1922, and an exception is hereby allowed the defendant.

Dated this 16th day of March, 1922.

THOS. M. REED,
Judge, District Court.

Service of a true copy of the foregoing order is hereby acknowledged.

A. G. SHOUP,
U. S. Attorney.

Entered Court Journal No. I, page 183.

Filed in the District Court, District of Alaska, First Division. Mar. 16, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [29]

[Caption and Title.]

No. 1536—B.

Order Dismissing Appeal and Affirming Justice Court Judgment.

The within matter coming on for hearing on the 11th day of March, 1922, on the motion of the United States Attorney to dismiss the appeal taken in said cause from the United States Commissioner's Court for Sitka Precinct, Territory of Alaska, to the District Court for the District of Alaska, Division No. 1, at Juneau, for the reason that no undertaking for costs and disbursements had been filed by the defendant as required by law, and the United States appearing by H. D. Stabler, Special Assistant United States Attorney, and the appellant appearing by Wickersham and Kehoe, his attorneys of record, and it appearing to the Court that the undertaking for costs and disbursements that may be awarded against the appellant on the appeal has not been made and filed in said appeal as required

by law, and it appearing, therefore, that this Court has not jurisdiction to hear said cause *de novo* on the appeal, therefore, it is ORDERED AND ADJUDGED that appellant's said appeal be, and the same hereby is, dismissed; and it is further ORDERED AND ADJUDGED that the judgment heretofore had in said cause in the United States Commissioner's Court for Sitka Precinct, on the 9th day of January, 1922, to wit, that the defendant serve three months' confinement in the jail at Juneau, Alaska, and to pay a fine of $600.00 and the costs of the action be, and the same hereby is, affirmed; and it is further ORDERED AND ADJUDGED that the said appellant pay the costs and disbursements of the said appeal. To which order the defendants by his attorneys excepted and exception allowed.

Done in open court, this 16th day of March, 1922.

THOS. M. REED,
Judge.

Filed in the District Court, District of Alaska, First Division. Mar. 16, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [30]

Entered Court Journal No. I, page 182.

[Caption and Title.]

No. 1536—B.

Order for Bench-Warrant.

The appeal of the above-named defendant having been this day dismissed, and the judgment rendered

against said defendant in the United States Commissioner's Court, at Sitka, Alaska, on the 9th day of January, 1922, having been affirmed, and said defendant not appearing, it is ORDERED that a bench-warrant be issued upon the application of the United States Attorney, directing the United States Marshal to take said defendant into his custody.

Dated at Juneau, Alaska, this 16th day of March, 1922.

THOS. M. REED,
Judge.

Filed in the District Court, District of Alaska, First Division. Mar. 16, 1922. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. I, page 183. [31]

Certificate.

United States of America,
District of Alaska,
Division No. 1,—ss.

I, the undersigned, Clerk of the District Court for the District of Alaska, Division No. One, do hereby certify that the hereto attached is a full, true and correct copy of the original transcript on appeal from the United States Commissioner's Court at Sitka, Alaska, with all records and papers filed in the District Court for the District of Alaska, Division No. 1, in Cause No. 1536—B, United States of America vs. Harry Mabry, on file and of record in my office, at this date.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed the seal of said court at Juneau, Alaska, this 24th day of March, 1922.

[Seal] JOHN H. DUNN,
Clerk.
By L. E. Spray,
Deputy.

Filed in the District Court, District of Alaska, First Division. Mar. 25, 1922. John H. Dunn, Clerk. By L. E. Spray, Deputy.

Service is admitted this 25th day of March, 1922, of a copy of the within record and files, certified by J. W. Kehoe, attorney for petitioner.

GEO. D. BEAUMONT,
U. S. Marshal. [32]

[Caption and Title.]

No. 2169-A.

Order Granting Writ of Habeas Corpus.

Upon reading and filing the petition of Harry Mabry, the above-named plaintiff, duly signed and verified by him, whereby it appears that said Harry Mabry is illegally imprisoned and restrained of his liberty by George D. Beaumont, United States Marshal for the territory of Alaska, First Division, at the Federal Jail in the United States Courthouse, in the city of Juneau, Alaska, and stating wherein the illegality consists, from which it appears to me that a writ of habeas corpus ought to issue:

IT IS ORDERED that a writ of habeas corpus issue out of and under the seal of the said District Court for the territory of Alaska, First Division, Juneau, directed to the said George D. Beaumont, United States Marshal, as aforesaid, commanding him to have the body of the said Harry Mabry before me in the courtroom of the said Court, in the said courthouse at Juneau, Alaska, on the 28th day of March, 1922, at 10 o'clock A. M. of that day, to do and receive what shall then and there be considered and adjudged concerning the said Harry Mabry, together with the time and cause of his detention, and that he have then and there the said Writ.

Done at the courthouse, at Juneau, this 25th day of March, 1922.

THOS. M. REED,
Judge of the Said District Court.

Filed in the District Court District of Alaska, First Division. Mar. 25, 1922. John H. Dunn, Clerk. By————, Deputy.

Entered Court Journal No. R, page 119. [33]

[Caption and Title.]

No. 2169-A.

Writ of Habeas Corpus.

The United States of America.

To George D. Beaumont, United States Marshal, First Division, Alaska, Juneau.

WE DO HEREBY COMMAND YOU that you have and produce the body of Harry Mabry, the

plaintiff and petitioner herein, now imprisoned and restrained by you as such United States Marshal by whatsoever name he may be charged or called, and certify and return therewith the time and cause of his imprisonment or restraint before the Honorable Thos. M. Reed, Judge of the District Court for the Territory of Alaska, First Division, at the courtroom of said Court in the United States courthouse at Juneau, Alaska, on the 28th day of March, 1922, at the hour of 10 o'clock A. M., of that day, to do and receive what shall then and there be adjudged and considered concerning him, the said Harry Mabry.

AND HAVE YOU THEN AND THERE THIS WRIT.

WITNESS the Honorable THOS. M. REED, Judge of the District Court for the Territory of Alaska, First Division, Juneau, at the courtroom of said court in said Juneau, Alaska, this 25th day of March, 1922.

ATTEST my hand and seal of said District Court, the day and year last above written.

[Seal] JOHN H. DUNN,
Clerk District Court for the Territory of Alaska,
First Division at Juneau, Alaska. [34]

[Caption and Title.]

Return to Writ of Habeas Corpus.

In obedience to the within writ, I certify and return to the District Court for the District of

Alaska, Division Number One, that before the coming of said writ to me, to wit, on the 9th day of January, 1922, at Sitka, Alaska, pursuant to the judgment made and entered in the United States Commissioner's, *Ex-officio* Justice of the Peace, Court at Sitka, Alaska, a copy of which judgment is hereto annexed, I committed the within-named petitioner, Harry Mabry, to the United States Jail, at Sitka, Alaska, that thereafter, to wit, on the 14th day of January, 1922, I discharged said Harry Mabry from custody in obedience to order of R. W. DeArmond, Commissioner and *Ex-officio* Justice of the Peace in and for the Precinct of Sitka, District of Alaska, Division No. 1, pending an appeal from said judgment, a copy of which order is hereto attached, and thereafter, to wit, on the 24th day of March, 1922, pursuant to an order made by this Honorable Court dismissing said appeal and affirming said Justice Court judgment, dated the 16th day of March, 1922, a copy of which is hereto attached, the said Harry Mabry voluntarily surrendered himself into my custody in execution of said Justice Court Judgment and order dismissing said appeal, and I thereupon committed said Harry Mabry to the United States jail at Juneau, Alaska, where he has since been confined; to all of which I hereby certify and have here with me the body of said Harry Mabry, as by the said writ commanded.

Dated at Juneau, Alaska, this 28th day of March, 1922.

GEO. D. BEAUMONT,
United States Marshal. [35]

COPY.

[Caption and Title.]

ORDER DISMISSING APPEAL AND AFFIRMING JUSTICE COURT JUDGMENT.

The within matter coming on for hearing on the 11th day of March, 1922, on the motion of the United States Attorney to dismiss the appeal taken in said cause from the United States Commissioner's Court for Sitka Precinct, Territory of Alaska, to the District Court for the District of Alaska, Division No. 1, at Juneau, for the reason that no undertaking for costs and disbursements had been filed by the defendant as required by law, and the United States appearing by H. D. Stabler, Special Assistant United States Attorney, and the appellant appearing by Wickersham and Kehoe, his attorneys of record, and it appearing to the Court that the undertaking for costs and disbursements that may be awarded against the appellant on the appeal has not been made and filed in said appeal as required by law, and it appearing therefore that this court has not jurisdiction to hear said cause *de novo* on the appeal, therefore, it is ORDERED AND ADJUDGED that appellant's said appeal be, and the same hereby is, dismissed; and it is further ORDERED AND ADJUDGED that the judgment heretofore had in such cause in the United States Commissioner's Court for Sitka Precinct, on the 9th day of January, 1922, to wit, that the defendant serve three months' confinement in the jail at Ju-

neau, Alaska, and to pay a fine of $600.00, and the costs of the action be, and the same hereby is, affirmed; and it is further ORDERED AND ADJUDGED that the said appellant pay the costs and disbursements of the said appeal. To which order the defendant by his attorneys except and exception allowed.

Done in open court, this 16th day of March, 1922.

THOS. M. REED,
Judge.

I certify the foregoing is a full, and true copy of certified copy of the original *thereof* delivered to me by the clerk of the above-entitled court.

GEO. D. BEAUMONT,
U. S. Marshal. [36]

(COPY.)

[Caption and Title.]

JUDGMENT.

Violation of Alaska Bone Dry Law—Pub. No. 308.

On the 9th day of January, 1922, the above-named Harry Mabry having been brought before me, R. W. DeArmond, a U. S. Commissioner and *Ex-officio* Justice of the Peace at Sitka, Alaska, in a criminal action for the crime of violating the Alaska Bone Dry Law and the said Harry Mabry having pleaded not guilty and been duly tried by jury trial and upon such trial Harry Mabry having been duly convicted, I have adjudged that he be imprisoned in the jail at Sitka for four months

and that he pay the costs of the action taxed at Ninety-three and 55/100 Dollars, and that he pay a fine of Six Hundred Dollars, and be imprisoned in such jail until such fine and costs be paid, not exceeding three hundred days.

In Witness Whereof I have set my hand at Sitka, Alaska, this 9th day of January, 1922.

[Seal] R. W. DeARMOND,
U. S. Commissioner and *Ex-officio* Justice of the Peace.

A true copy of the original entry of judgment.

[Endorsed]: United States of America, District of Alaska,—ss.

I certify that I received the within commitment on the 9th day of January, 1922, and executed the same on the 9th day of January, 1922, by delivering the within-named defendant to the jailer of the U. S. jail, at Sitka, Alaska.

GEO. D. BEAUMONT,
U. S. Marshal.
By S. G. Thomas,
Deputy U. S. Marshal.

I certify the foregoing is a full, and true copy of a certified copy of the original thereof delivered to me by R. W. DeArmond, Commissioner for the Sitka Precinct, Dist. of Alaska.

GEO. D. BEAUMONT,
U. S. Marshal. [37]

Order Releasing Defendant from Custody.

In the United States Commissioner's *Ex-officio* Justice Court, Sitka Precinct, Judicial Division Number One, Territory of Alaska.

To the United States Marshal, First Judicial Division, Territory of Alaska.

Harry Mabry, who is detained by you in execution of a judgment whereby he is condemned to serve an imprisonment in the Juneau Jail for a period of four months and that he pay the costs of this action taxed at Ninety-three and 55/100 ($93.55) Dollars, and that he pay a fine of Six Hundred ($600.00) Dollars, and be imprisoned in such jail until such fine and costs be paid, not exceeding three hundred days, having appealed from said judgment and given sufficient bail to abide and perform the judgment of the Appellate Court, you are commanded forthwith to discharge him from your custody.

January 14, 1922.

[Seal] R. W. DeARMOND,

United States Commissioner Ex-officio Justice of the Peace, Sitka, Precinct, Territory of Alaska.

I certify the foregoing is a full, true and correct copy of the original thereof.

GEO. D. BEAUMONT,
U. S. Marshal.

Filed in the District Court District of Alaska, First Division, Mar. 29, 1922. J. H. Dunn, Clerk. By————, Deputy. [38]

[Caption and Title.]

2169—A.

Order Discharging Writ of Habeas Corpus.

This day came the petitioner, Harry Mabry, in person and by his attorneys, Wickersham and Kehow, and also the said George D. Beaumont, United States Marshal, defendant, in person and represented by the United States Attorney, Arthur G. Shoup, and H. D. Stabler, his assistant, and this cause having been fully heard on the petition for the writ of habeas corpus, and upon said writ, and the return of the said Marshal thereto, and upon the evidence introduced, and the court having heard the arguments of counsel for the parties, and being fully advised in the premises, doth find and adjudge that the petitioner, Harry Mabry, is legally and rightfully held in custody by virtue of the judgment of conviction aforesaid by said R. W. DeArmond, as United States Commissioner and *Ex-Officio* Justice of the Peace, in and for the Sitka precinct, first division, Alaska, which judgment was made and entered by the said justice in the said criminal action of the United States vs. Harry Mabry, on the 9th day of January 1922, then pending in that said Justice's Court in said precinct, and is fully set out in the petition of the petitioner for habeas corpus in this case, which said judgment of conviction so made and entered in said Justice's Court was affirmed by the order of this Court on the 16th day of March, 1922. dismissing the attempted appeal of this

petitioner from said judgment in said Justice's Court, and which said order of affirmance so made on the 16th day of March, 1922, by this [39] Court is set out in full in the said petition of Harry Mabry in his said petition herein for the writ of habeas corpus in this case; and which two said judgments are the same as those set out in the return of the said Marshal as his warrant and authority for holding and imprisoning the said Harry Mabry, the petitioner and plaintiff in this case:

It is ORDERED and adjudged that the said Harry Mabry be, and he is hereby, remanded to the custody of the said George D. Beaumont, United States Marshal, aforesaid and that the said Marshal, hold and imprison the said Harry Mabry in the jail as aforesaid, as provided and commanded by the said judgment of the said justice of the peace and as affirmed by the said judgment of this Court so made and entered of record herein on the said 16th day of March, 1922, as said judgments are set out and described in the return of the said Marshal in this case.

To all of which the petitioner and plaintiff in this case hereby excepts and said exception is allowed and noted herein.

Done in open court this 3d day of April, 1922.

THOS. M. REED,
District Judge.

Filed in the District Court District of Alaska, First Division. Apr. 3, 1922. J. H. Dunn, Clerk. By————, Deputy.

Entered Court Journal No. R, page 130. [40]

[Caption and Title.]

Bill of Exceptions.

BE IT REMEMBERED, that on the 28th day of March, 1922, being the time set for the return of the writ of habeas corpus issued by this court in this cause, the petitioner, Harry Mabry, appeared in court in the custody of George D. Beaumont, the United States Marshal of this division, the defendant in this action, and thereupon the said defendant filed his Return to the writ of habeas corpus issued in this case, which return on being read by the attorney for the said petitioner was excepted to by him for said petitioner and an oral denial was made to so much thereof as alleged that the petitioner voluntarily surrendered himself into the custody of the said marshal and voluntarily yielded to the restraint and imprisonment complained of in the petition herein for the writ, and thereupon the judge of this court asked if petitioner desired to offer any testimony in denial thereof, and whereupon counsel for the petitioner asked leave of the Court to introduce testimony in denial thereof, and leave of the Court being had called George D. Beaumont and Harry Mabry as witnesses who being first duly sworn gave the following testimony, to wit:

James Wickersham appeared for plaintiff. A. G. Shoup, U. S. Attorney and H. D. Stabler, Special Asst. U. S. Attorney, appeared for defendant.

And thereupon the plaintiff, to maintain the issues on his part, introduced the following evidence, to wit: [41]

Testimony of George D. Beaumont, for Plaintiff.

GEORGE D. BEAUMONT, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. WICKERSHAM.

Q. State your name and official position.

A. George D. Beaumont, United States Marshal.

Q. First Division, Territory of Alaska?

A. First Division, Territory of Alaska.

Q. In this return, in the case of Mabry against Beaumont, habeas corpus, in your return to the writ of habeas corpus, I notice that you state that "the said Harry Mabry voluntarily surrendered himself into my custody, in execution of said Justice Court judgment and order dismissing said appeal." I wish you would state what occurred in relation to his first incarceration.

Mr. SHOUP.—If the Court please, I object to that as irrelevant and immaterial, and on the ground that it is on the second incarceration.

The COURT.—Objection sustained.

Mr. WICKERSHAM.—Well, that's merely preliminary.

The COURT.—Well, the only question at issue is whether he voluntarily surrendered himself.

Mr. WICKERSHAM.—Yes, but I wanted to show all the circumstances.

(Testimony of George D. Beaumont.)

The COURT.—I don't care about going into all the circumstances.

Mr. WICKERSHAM.—I note an exception.

Q. You had Mabry in your possession here under a warrant, but you say in here that he was discharged upon giving an appeal bond?

A. Yes, sir.

Q. He was taken into your custody again the second time?

A. He came up to my office.

Q. Who came with him?

A. He came into the office alone.

Q. Do you know whether or not he had been sent for? [42]

A. He had not.

Q. Do you know whether or not your man was out looking for him?

A. Well, I sent Mr. Thomas—told Thomas that if he said Mabry to tell him to come up.

Q. Do you know that Mr. Thomas was in my office looking for him? A. No, I do not.

Q. Do you know that he went from there down to the hotel, looking for him? A. No, I don't.

Q. You don't know anything about that?

A. He made no report to me. I just told him. I asked him if he saw Mabry come over on the boat, and he said he did. "Well," I said, "where is he"? and he said, "I don't know. He's in town." I said, "If you see him, you better tell him to come up here." And the next I knew Mabry came into my office and I said, "Are you ready to go down-

(Testimony of George D. Beaumont.)

stairs"? and he said, "I am." So I put him downstairs.

Q. You had then, process for his incarceration, according to your report? A. Yes, sir.

Q. And had a man out looking for him?

A. No, sir; not looking for him.

Q. Thomas was out looking for him?

A. I don't know; I couldn't say as to that. I told Thomas, "If you see him, tell him he better come up."

Q. When was that?

A. That was the morning Mabry came in.

Q. How long before Mabry came in?

A. Oh, probably an hour.

Q. But he is being held now under the original writ according to your report and the order of the Court dismissing the case? A. Yes, sir.

Q. That's all you know about that particular matter? A. That's all that I know?

Mr. WICKERSHAM.—That's all.

Mr. SHOUP.—No cross-examination. [43]

Testimony of Harry Mabry, in His Own Behalf.

HARRY MABRY, the plaintiff herein, called as a witness on his own behalf, was examined and testified as follows:

Direct Examination by Judge WICKERSHAM.

Q. On the morning of the 24th of this month—I think it was last Friday—did you come into my office? A. Yes, sir.

Q. What did you learn with respect to some of

(Testimony of Harry Mabry.)

the marshals looking for you? How soon after that?

A. Well, I went back to the Alaskan Hotel—

Q. (Interposing) Yes.

A. And Mr. Thomas came in and told me that I was wanted at the marshal's office.

Q. And what did you do thereupon?

A. I called you up and told you that "they are here, after me now." In fact, you told me if the marshal come around to pick me up for me to call you up, which I did from the Alaskan Hotel.

Q. Who is the Mr. Thomas that told you that the marshal wanted you?

A. He's the marshal from Sitka.

Q. He is the marshal from where?

A. From Sitka.

Q. He is the United States Deputy Marshal from Sitka, Alaska? A. Yes, sir.

Q. Where did he meet you in the hotel?

A. In the hotel lobby.

Q. Now, just relate all that was said.

A. He just come up to me and told me that I was wanted at the marshal's office, and I asked him if I should go up right away and he said, "Yes," that I should go with him.

Q. Do what?

A. He said that I should come along with him. [44]

Q. And did you?

A. Yes, but I called you up, and there was a man behind the desk that heard me also.

(Testimony of Harry Mabry.)

Q. How far did you come with him?

A. He just went to the courthouse with me.

Q. Did you know who he was? A. Yes, sir.

Q. How long have you known Thomas?

A. Well, I have known him, oh, a couple of years. I knew him before he went into office.

Q. He is the marshal who has been over at Sitka?

A. Yes.

Q. What did he have for arresting you in the first place?

A. In Sitka he had a warrant—I suppose he did.

Q. Did he exhibit any papers to you here the other day when he re-arrested you? A. No.

Q. Why did you come with him?

A. He was the marshal. I supposed he had a right to take me.

Q. And you came with him for that reason?

A. Yes, sir.

Q. Where did you come to?

A. Came to the marshal's office, downstairs.

Q. And went in. I think that is sufficient.

Judge WICKERSHAM.—That's all.

Petitioner rested. No other testimony. [45]

[Caption and Title.]

No. 2169—A.

Certificate of Official Reporter.

I hereby certify that I am the official reporter for the United States District Court, First Division of

Alaska; that I reported the testimony given at the trial of the above-entitled cause, and that the foregoing is a full, true and correct transcript of all evidence given and proceedings had at said hearing.

Dated this third day of April, 1922.

G. W. FOLTA,
U. S. Court Reporter. [46]

Whereupon after hearing the said witnesses and their testimony aforesaid, and after also hearing the arguments of counsel on the issues presented by the petition for the writ, and the writ, and the return so made thereto by the marshal, and being fully advised on all the facts in the case, took the matter under advisement until the 3d day of April, 1922, at which time he will render his opinion in this case and render judgment therein.

The above bill of exceptions being true and correct, is now allowed, settled and signed, and I do hereby certify that the foregoing and included testimony of the witnesses George D. Beaumont and Harry Mabry is the only and all the testimony offered and taken and heard by the Court in this case, on the trial of any of the issues therein.

Settled, allowed and signed in open court on this the 3d day of April, 1922.

THOS. M. REED,
District Judge.

Filed in the District Court, District of Alaska, First Division. Apr. 3, 1922. J. H. Dunn, Clerk. By ————, Deputy. [47]

[Caption and Title.]

No. 2169—A.

Memorandum Opinion on Petition for Writ of Habeas Corpus.

Messrs. WICKERSHAM & KEHOE, for Plaintiff.
United States Attorney A. G. SHOUP and Assistant United States Attorney H. D. STABLER, for Defendant.

The petitioner, Harry Mabry, was convicted before the Commissioner and *Ex-officio* Justice of the Peace on January 9, 1922, on a complaint made by H. D. Stabler, Assistant United States Attorney, for having, on December 1, 1921, in his possession, intoxicating liquors, and a judgment was entered thereon by the justice on the same date. The petitioner thereafter, on January 14, 1922, served and filed a notice of appeal from said judgment so given, but failed to file, within the thirty days allowed by the statute, an undertaking for costs and disbursements on the appeal, as required by Secs. 2551 and 2552, Compiled Laws of Alaska. On March 16, 1922, because of such failure, on motion of the United States Attorney, the appeal of petitioner was dismissed and, in compliance with Sec. 2559, Compiled Laws of Alaska, the judgment of the justice was affirmed by this Court and the petitioner committed to the custody of the United States Marshal, in accordance with the original judgment of the justice. The petitioner, on March 25, 1922,

filed his petition for a writ of habeas corpus, praying that he be discharged from custody, on the ground that he was illegally restrained of his liberty by the United States Marshal. Upon presentation of the petition, a writ was issued, returnable [48] March 28th, on which date the defendant, George D. Beaumont, United States Marshal, produced the prisoner into court and submitted his return.

The petitioner alleges that he has not been committed, and is not detained, by virtue of any judgment, decree, final order or process issued by a court or Judge of the United States in a case where such courts or Judges have jurisdiction, or by virtue of the final judgment or decree of a competent tribunal having jurisdiction, and is not imprisoned or restrained by virtue of any order or judgment specified in Sec. 1339, Compiled Laws of Alaska; that is to say, by virtue of a legal judgment of a competent tribunal of criminal or civil jurisdiction, or of an execution regularly or lawfully issued thereupon.

The petition thereafter states, as required by Section 1410, Compiled laws of Alaska, the cause and pretence of the restraint, to the effect that the petitioner was complained of by one H. D. Stabler, before R. W. DeArmond, Commissioner and *Ex-officio* Justice of the Peace of the Sitka Precinct, in this Division and Territory, for an alleged violation of the Alaska Bone Dry Act, by charging petitioner with having had in his possession, in said precinct, intoxicating liquor, on December 1, 1921; that the complaint aforesaid was filed with the Commissioner

on January 9, 1922, and upon the filing of said complaint, the Commissioner issued a warrant of arrest, and so forth, as stated in the opening paragraphs hereof.

The specifications of the alleged unlawful detention and restraint of petitioner consist of twelve separate allegations which may be summarized in condensed form as follows:

1. That the judgment of the Justice of the Peace or Commissioner is not based upon any crime known by the laws of the United States and the pretended crime therein set forth is not [49] a crime known to the law.

2. That the said pretended judgment being void for want of jurisdiction, all subsequent proceedings were void.

3. That such judgment, being void and in excess of the jurisdiction of the Justice Court, all subsequent proceedings and judgment of this court were void and the restraint of defendant is without authority of law.

4. That the complaint against the defendant, filed in the Justice Court, was in violation of Sec. 28 of the act of Congress entitled "An Act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes," approved February 14, 1917, and was made without authority of law and did not state facts sufficient to constitute a crime or give the Justice Court jurisdiction to hear, try or sentence the petitioner.

5. That the warrant upon which the petitioner was arrested and brought before the Commissioner

was void and illegal and in direct violation of Sec. 2384, Compiled Laws of Alaska, in that it did not state that any crime had been committed by petitioner.

6. That the verdict of the jury rendered against the petitioner was void in that it did not state that the petitioner was guilty of any crime and did not afford any jurisdiction to enter any judgment thereon.

7. Because the judgment so entered was null and void in that it ordered the defendant imprisoned in the Sitka jail until the costs of the case were paid.

8. Because the docket entries show that the alleged charge against the petitioner was not a crime and that, therefore, subsequent proceedings were void.

9. Because the sentence of the justice for a period of imprisonment in jail of four months and an additional 300 days, as [50] therein stated, exceeds the jurisdiction of the justice and was null and void.

10. That the dismissal of the appeal from the Justice Court of the petitioner was without authority of law and was without jurisdiction and void.

11. That the order of the issuance of a bench-warrant for the arrest of the defendant was null and void and in excess of the jurisdiction of the court.

12. That the restraint and imprisonment of defendant under the judgment of the justice of Janu-

ary 9, 1922, and of this Court of March 24, 1922, is illegal and without authority of law.

Attached to and made a part of the petition are certified copies of the record of the proceedings in the case of the United States vs. Mabry, initiated in the Commissioner's Court of the Sitka Precinct, this Division, on January 9, 1922, and ending with the dismissal of an appeal from the judgment of conviction in the Justice Court, by this court on the 24th day of March, 1922. This record discloses that on January 9, 1922, H. D. Stabler, Assistant United States Attorney, filed with the Commissioner and *Ex-officio* Justice of the Peace of the Sitka Precinct, First Division, Territory of Alaska, a complaint accusing the petitioner of a violation of Sec. 1 of the act of Congress approved February 14, 1917, entitled "An Act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes. The complaint, after entitling the court and cause, charges as follows:

> "Harry Mabry is accused by H. D. Stabler in this complaint of the crime of possessing intoxicating liquors, committed as follows, to wit:
>
> "The said Harry Mabry, in the District of Alaska and within the jurisdiction of this court, did wilfully and unlawfully, on the first day of December, 1921, at Sitka, Alaska, and in S. S. Thornton's residence, near the Russian Greek Church, at Sitka, Alaska, then and there have in his [51] possession, intoxicating

liquor, to wit. moonshine whiskey, contrary to the statutes in such cases made and provided, an against the peace and dignity of the United States.

(Sgd.) "H. D. STABLER,
"Asst. U. S. Attorney."

The complaint was sworn to by H. D. Stabler before the Commissioner and filed in his office on the ninth of January, 1922, and on the same date the Commissioner issued a warrant for the arrest of the petitioner. The warrant is in the form prescribed by Sec. 2385, Code of Criminal Procedure, except that the crime of which the defendant is accused was therein designated as "Violating the Alaska Bone Dry Act, Pub. No. 308," and to this defect the petitioner now takes exception. The defendant-petitioner was taken into custody by the marshal on the date of the issuance of the warrant and, as appears from the transcript of record from the Justice Court, on being brought before the justice, entered a plea of not guilty, demanded a jury trial and was tried and found guilty. The verdict of the jury, which is also excepted to by the counsel for defendant as being insufficient to give the Court jurisdiction, is as follows:

"In the United States Commissioner's Court, Sitka Precinct, Division No. 1, Territory of Alaska.

"UNITED STATES OF AMERICA,

vs.

"HARRY MABRY.

JURY VERDICT.

"We, the undersigned jurors in the above matter, duly summoned and impanelled, after hearing the evidence presented and giving sincere consideration to the same, find the defendant Harry Mabry guilty."

(Sgd. by twelve jurymen.)

Thereupon the Commissioner sentenced the defendant.

A certified copy of the judgment entry of the sentence, as appears from the docket of the justice, is made a part of the record of the petitioner, and as the petitioner bases his main [52] contention as to the illegality of his arrest and confinement on this judgment, I give it in full, as follows:

"Justice Court for the District of Alaska, Division No. 1, at Sitka.

"THE UNITED STATES

vs.

"HARRY MABRY,

Defendant.

Violation of Alaska Bone Dry Law Pub. No. 308.

"On the ninth day of January, 1922, the above-named Harry Mabry, having been brought before R. W. DeArmond, the United States Commissioner and *Ex-officio* Justice of the Peace at Sitka, Alaska, in a criminal action for the crime of violating the Alaska Bone Dry Law, and the said Harry Mabry having pleaded not guilty and being duly tried by a jury trial and upon such trial Harry Mabry having been duly convicted, I have adjudged that he be imprisoned in jail at Sitka for four months and that he pay the costs of the action taxed at $93.55, and that he pay a fine of $600 and be imprisoned in such jail until such fine and costs have been paid, not exceeding 300 days."

On January 11, 1922, the record further shows that the defendant filed with the Commissioner a notice of appeal to this court and on the same date filed an undertaking on bail on appeal, as provided by Sec. 2325, and Sec. 2328, Compiled Laws of Alaska, and thereupon the petitioner was released from the custody of the marshal. On March 8, 1922, the United States Attorney filed his motion to dismiss the appeal because no undertaking for costs and disbursements on appeal, as required by Sec. 2551 and Sec. 2552, Compiled Laws of Alaska, had been given by the defendant. This motion was heard in chambers on March 11, 1922, and on March 14 the defendant moved to file a bond for costs and disbursements on appeal, which motion was denied on March 16 as of the date of the 14th, because this Court found that no undertaking, or what pur-

ported to be in the nature of a bond or undertaking on appeal had been filed within the thirty days required from the time of the entry of the judgment; that the undertaking filed by defendant was a bail bond only and could not be amended as a defective [53] undertaking and bond for costs on appeal, under the provisions of Sec. 2560, Compiled Laws of Alaska.

Thereupon the defendant presented this, his petition, for a writ of habeas corpus, alleging that he is, for the several reasons set forth in his petition and above stated, unlawfully restrained of his liberty by the United States Marshal. The return of the United States Marshal alleges that the petitioner was in custody by virtue of the aforesaid judgment of the justice and the order and judgment of this court, affirming the judgment of the justice. He further returned that the petitioner voluntarily surrendered himself into custody by virtue of said judgment. That part of the return of the United States Marshal stating that the petitioner voluntarily surrendered himself to the United States Marshal was controverted by the petitioner and thereupon testimony was taken, from which it appears that the surrender of the defendant to the custody of the United States Marshal was not voluntary, but was made on demand of the United States Marshal that he do so, the United States Marshal having the commitment in his possession.

The case has been ably argued by the counsel for petitioner, the United States Attorney appearing *in contra.* The United States Attorney takes the

position that the defects or errors pointed out by petitioner were not jurisdictional and were such as could be corrected by writ of error or appeal in the original case and that therefore the remedy of *habeas corpus* would not lie. It is well settled that the writ of habeas corpus cannot be put to the use of reviewing judgments or orders made by a judge or court acting within his or its jurisdiction. The functions of the writ, where a party who has applied for its aid is in custody, do not extend beyond an inquiry into the jurisdiction of the court by which it was issued and the validity of the process upon its face. [54]

See Savin petitioner, 131 U. S. 267.
In re Coy, 127 U. S. 731.
Ex parte Yarborough, 110 U. S. 653.
Bailey on Habeas Corpus, par. 30.

The return of the United States Marshal shows that the petitioner is held by him under restraint by virtue of the judgment of this court dismissing the appeal from and affirming the judgment of the lower court, and the contention of the United States Attorney is that the petitioner is herein invoking the remedy by *habeas corpus* as an anticipatory writ of error; that if the lower court had jurisdiction of the case as disclosed and jurisdiction of the person, correction of errors and irregularities cannot be made by a writ of *habeas corpus.* Counsel for petitioner, on the other hand, contends that the judgment of the lower court was absolutely void in not disclosing with certainty the crime of which the defendant was convicted, and that the affirmance

thereof by this court was equally void because the judgment of this court had no more force and effect than the original judgment of which it was an affirmance.

In this connection, the point was made by the Government that the petitioner, in his position, is inconsistent even to the point of an estoppel, in that he sought to appeal from the judgment of the lower court and voluntarily sought to invoke the jurisdiction of this court to try the case *de novo*. Having done so, he stands now in an inconsistent position by placing himself apparently within the rule of employing the writ as an anticipatory writ of error.

In the case of Henry vs. Henkle, 235 U. S. 228, the Supreme Court lays down the rule as to how far the court should go into the record on a petition for a writ of habeas corpus, in the following language. [55]

> "In view, however, of the nature of the writ and the character of the detection under a warrant, no hard and fast rule has been announced as to how far the Court will go in passing upon questions raised in habeas corpus proceedings. In cases which involve a conflict of jurisdiction between state and federal authorities, or where the treaty rights and obligations of the United States are involved, and in that class of cases pointed out in Ex parte Royal, 117 U. S. 241; Ex parte Lang, 18 Wallace 163; New York vs. Eno, 155 U. S. 89; In re Loney, 134 U. S. 372, the Court hearing the application will

carefully inquire into any matter involving the legality of the detention and remand or discharge, as the facts may require. But barring such exceptional cases, the general rule is that on such application, the hearing should be confined to the single question of jurisdiction, and even that will not be decided in every case in which it is raised."

The case of Ex parte Royal was a case wherein a writ was prayed for on the ground that the petitioner was confined under a state statute alleged to be in conflict with the Constitution of the United States. The case of Ex parte Lang arose on the point as to whether a second sentence of imprisonment could be imposed by the Court during the same term of court, after the court had theretofore imposed a sentence of fine and imprisonment contrary to law, the Court holding that the authority of the lower court was ended with the first judgment. The cases of New York vs. Eno and In re Loney are cases involving the question whether the offenses therein referred to were cognizable exclusively under the laws of the State or the United States or by both, and all turn to a large extent upon the question of the jurisdiction of the specific courts to entertain the original action.

In the case of Glasgow vs. Moyer, 225 U. S. 420, the Supreme Court, through Mr. Justice McKenna, uses this language, which is very pertinent in the instant case, as disposing of several grounds for the discharge of the prisoner, urged by counsel for petitioner. Justice McKenna says: [56]

> "The writ of habeas corpus cannot be made to perform the office of a writ of error. This has been decided many times and, indeed, was the ground upon which a petition of the applicant for habeas corpus to this court before trial was decided. It is true, as we have said, that the case had not been tried, but the principle is as applicable and determinative after trial as before trial."

This was decided in one of the cases cited, In re Lincoln (208 U. S. 178), which cited other cases to the same effect. Harlan vs. McGourin (218 U. S. 442) was an appeal from a judgment discharging a writ of habeas corpus petitioned for after conviction, and it was held that the writ could not be used for the purpose of proceedings in error, but was confined to a determination whether the restraint of liberty was without authority of law.

> "In other words," as it was said, "upon habeas corpus the court examines only the power and authority of the court to act and not the correctness of its conclusions. Matter of Gregory (219 U. S. 210) was a writ of habeas corpus brought after conviction and we said that we were not concerned with the question whether the the information upon which the petitioner was prosecuted and convicted was sufficient or whether the case set forth in an agreed statement of facts constituted a crime—that is to say, whether the Court properly applied the law—if it be found that the Court

had jurisdiction to try the issues and to render the judgment."

The Court then says—

"The principle of the case is the simple one 'if the Court has jurisdiction of the case, the writ of habeas corpus cannot be employed to retry the issues, whether of law, constitutional or other or of fact.' "

Again the Court, in the same case, says—

"The principle is not the least applicable because the law which was the foundation of the indictment and trial is asserted to be unconstitutional or uncertain in the description of the offense. Those questions like others, the court is invested with jurisdiction to try, if raised, and its decision can be reviewed like its decisions upon other questions, by writ of error."

After a further discussion, the court says that it would introduce confusion in the administration of justice if the defenses which might have been made in an action could be reserved as grounds of attack upon the judgment after verdict. [57]

The question of the jurisdiction of the Commissioner and *ex-officio* Justice of the Peace at Sitka to hear and to try all classes of cases for violation of the Alaska Bone Dry Act of Congress, approved February 14, 1917, is not seriously questioned by counsel for petitioner. Sec. 28 provides to that effect in the following language:

"That prosecutions for violations of the provisions of this act shall be on information,

> filed by any such officer, before any justice of the peace or district judge, or upon indictment by the grand jury of the Territory of Alaska; and said United States District Attorney or his deputy, shall file such information upon presentation to him, or his assistants, of sworn information that the law has been violated."

But counsel for petitioner urges that the said section provides that the prosecution shall be on information, while in the case under discussion the prosecution was upon a complaint filed by one purporting to be the Assistant United States Attorney, and he further contends that the United States Attorney or his assistant can file such information only upon a sworn information being presented to him of the violation of the law, and that therefore the justice had no jurisdiction of the offense.

The interpretation given by counsel as to the authority of the United States Attorney or his assistants to file an information I cannot agree with. A reasonable construction of the statute is that when a sworn information is presented to the United States Attorney or his assistants of a violation of the law, he shall file an information. In other words, the section makes it the mandatory duty of the United States Attorney, upon the presentation to him, under oath, of information of the violation of the law, to file an information with the justice or court. The question of the validity of the accusation before the justice, as to whether it was an information or complaint, does not seem to be material. Sec. 2379, Compiled Laws, defines

information "as the allegation or statement made before a magistrate [58] and verified by the oath of the party making it, that a person has been guilty of some designated crime." The accusation in this case is designated as a complaint, but it fulfils, in every respect, the functions of an information. It alleges that the defendant-petitioner herein was, on the first day of December, 1921, at Sitka and within the jurisdiction of the court, guilty of having in his possession intoxicating liquors; that is to say, moonshine whiskey, contrary to the form of the statutes in such cases made and provided.

The common-law distinction between a complaint and an information is that the former is an accusation or charge against an offender made by a private person, under oath, to the justice of the peace or other proper officer, alleging that the offender has violated the law, while an information was an accusation filed by the prosecuting officer, charging an offense against the law. In the former the party making the accusation was known as the private prosecutor.

See Compiled Laws, Sec. 2521 and 2379,
Lincoln v. Smith, 27 Vt. 1,
In re Oliphant, 53 Am. Reports 681,
Simon v. Starr, 158 Ind. 55,
Clipper v. State, 4 Texas 242.

In the case of the United States vs. Mabry, under discussion, the designation of the instrument filed before the Justice is only a question of nomenclature. The instrument bears all the essentials of an information, both under the statute and at common

law, even were the petitioner authorized to raise the question under the authorities heretofore cited.

The objection raised as to the warrant for the arrest of the defendant cannot be considered at this time even if it were material. This objection is that the warrant did not designate [59] any crime of which the defendant was accused in the complaint—simply designating that he was accused of violating the Alaska Bone Dry Law. It appears that the defendant appeared in open court, was informed of the charge against him, plead to the accusation and was tried. The question of his original arrest cannot be before the court at this time if he had submitted to the jurisdiction of the justice.

The question before the Court, on the granting of a writ of habeas corpus in this proceeding, is whether the petitioner is at this time illegally restrained of his liberty. As was said by Justice Cayner for the Supreme Court of Iowa, in Addis vs. Applegate, 171 Iowa, 150, the primary question in all proceedings of this kind, is whether or not the applicant is illegally restrained of his liberty at the time the application is made. It is immaterial, so far as the right to the writ is concerned, whether or not he was originally restrained by criminal or civil process. The question to be determined on this hearing is, Is he now lawfully or unlawfully restrained.

The counsel for petitioner further contends that the verdict of the jury was not sufficient in that it failed to state that the defendant was guilty as charged in the complaint or information, but stated

only that the jury found him guilty. The verdict recites the court and cause and is sufficient in that respect. The Supreme Court of the United States, in Statler vs. U. S., 157 U. S. 277, uses the following language:

> "It is settled, beyond question, that a verdict of guilty, without specifying any offense, is general and is sufficient and is to be understood as referring to the offense charged in the indictment,"

citing St. Clair vs. U. S., 154 U. S. 154.

In a trial *per pais* (8 ed. 1776, p. 287), the rule is thus stated: [60]

> "If the jury give a verdict of a whole issue and of more, that which is more is surplusage and shall not stay the judgment; *per utile per inutile non vitiatur.*"

Bishop's Criminal Procedure, page 623, Sec. 1005a, is substantially to the same effect, the words being:

> "A finding of lay people need not be framed under the strict rules of pleading or after any technical form. Any words which convey the idea to the common understanding will be adequate, and all fair indictments will be made to support it. To say, therefore, that the defendant is guilty of an offense named which is less than the whole alleged, is sufficient without adding 'as charged in the indictment,' for the latter will be supplied by the construction. So likewise a general finding of guilty will be

interpreted as guilty of all that the indictment alleges."

This, to my mind, disposes of the objection that the verdict of the jury was void for uncertainty.

We now come to the objection raised to the judgment. The petitioner maintains that the judgment of the justice was void because not in compliance with Sec. 2539, Compiled Laws. This section provides that when a judgment of conviction is given upon a plea of guilty or upon a trial, the justice must enter the same in the Justice Docket substantially as follows:

"Justice's Court for the Precinct of ———, District of Alaska, Division No. .

"THE UNITED STATES OF AMERICA v. A B

(Day of the month and year.)

"The above-named A B having been brought before me, C. D, a commissioner and *ex-officio* justice of the peace, in a criminal action, for the crime of (briefly designate the crime), and the said A. B having thereupon pleaded 'not guilty' (or as the case may be), and been duly tried by me (or by a jury, as the case may be), and upon such trial duly convicted, I have adjudged that he be imprisoned in the county jail days and that he pay the cost of the action, taxed at dollars (or that he pay a fine of dollars and such costs and be imprisoned in such jail until such fine and costs be paid, not exceeding days, as the case may be."

"C. D,

"Commissioner and *Ex-officio* Justice of the Peace."

[61]

This form was substantially followed by the justice in the judgment under cossideration in all particulars except that, in designating the crime of which the defendant was convicted, it recites that the crime was a violation of the Alaska Bone Dry Act. Counsel contends that this does not designate any crime; that there may be several crimes charged under this act and that the words "Alaska Bone Dry Law" in themselves, are meaningless as designating the crime, and that, therefore, the judgment of the justice is void as not being in compliance with the statute aforesaid.

It will be noted that the provisions of Sec. 2539 refer to the entry in the justice docket by the justice after the judgment is pronounced and refers merely to the ministerial act of the entry in the docket. Sec. 2535 of the Compiled Laws, provides that when the defendant pleads guilty or is convicted, either by the justice or the jury, the justice must give judgment thereon for such punishment as may be described by law for the crime. This judgment may be given orally and usually is. Sec. 2539 provides that when a judgment of conviction is given, the entry must be made substantially in the form prescribed.

Conceding, under this view of the act, that the entry of the judgment by the justice did not substantially comply with the form prescribed, would it render the judgment void? To this we should look to the whole record and from it we find that the defendant was convicted of a violation of Sec. 1 of the act referred to, in that he had in his possession,

on December 1, 1921, intoxicating liquor, to wit, moonshine whiskey, and sentence was made as prescribed by law.

But counsel contends that we can only look to the judgment as spread on the docket of the justice and that no presumption [62] can be had as to the justice proceedings, a Justice Court not being a court of record.

It is well settled that where a justice of the peace has jurisdiction of a person or subject matter, any judgment rendered by him will be sustained on the same basis as that of a court of record. In re Joseph, 173 N. W. 358, the following from 12 R. C. L., p. 1192, is cited with approval:

> "The judgment of an inferior court, such as a police court, mayors, magistrates or justices having jurisdiction conferred by law to try and dispose of a criminal case, is as conclusive and rests upon the same basis when jurisdiction is attached, as the adjudication of any common-law court."

It is to be presumed that the judgment was properly given by the justice, therefore, in the present case. In addition, I am of the opinion that the judgment entry was a substantial compliance with the statute. Common usage has given the phrase "Alaska Bone Dry Law" a definite meaning. It is universally known as referring to the act of Congress entitled, "An Act to prohibit the manufacture or sale of alcoholic liquors in the territory of Alaska, and for other purposes." It is so used by our Circuit Court of Appeals in the case of the United States

v. Abbate 270 Fed. 737, and in the case of Koppitz v. the U. S., 272 Fed. 96. In fact, the judgment in this case is identical in describing the offense with that used in the last-named case. Under the terms of the act of Congress known as the Alaska Bone Dry Act, the justice has jurisdiction over all offenses denounced by that act, and a person of common understanding, without looking further into the record than the judgment itself would know that the judgment was given for a violation of the act in question and that under the terms of the act itself the justice had jurisdiction of all offenses committed thereunder. [63]

If, as claimed by counsel for petitioner the words "Alaska Bone Dry Act" are meaningless and have no force and effect, then they could be rejected as surplusage and it is well settled by decisions of great weight that the omission to designate the crime of which defendant is found convicted in the judgment does not render the judgment void. At most it is a mere irregularity or informality. In Ex parte Satt, 129 N. W. 862, the Court say:

> "Where accused was tried and sentenced in a court of competent jurisdiction, the defect in his commitment to the penitentiary, arising from a failure to recite the offense is not a ground for discharge on habeas corpus."

In the recent case of Ex parte Thurston, 233 Fed. 847, Judge Neterer of the District Court, Western Division of Washington, on a petition for a writ of habeas corpus by Thurston, who was confined to

the United States penitentiary at McNeil's Island, State of Washington, on a conviction for violation of Sec. 195 of the Criminal Code of Alaska, in effect decided as follows:

> "Where the crime for which the accused was convicted and all the proceedings thereon through the trial and verdict, up to the conviction and sentence, appear on record, the fact that the judgment of sentence merely sentenced the accused to imprisonment in the penitentiary but did not cite the crime of which he was committed, will not warrant his release on *habeas corpus,* for the whole record, taken together, show the crime."

In the case of Ex parte Gibson, 31 Cal. 619, reported in 91 American Decisions, p. 546, the Supreme Court of California, through Justice Sanderson, rendered a very elaborate opinion on the subject, and I take the liberty to quote largely therefrom:

> "The only objection urged against this judgment by counsel for the prisoner is, that it does not state the offense of which he was convicted; and in view of that omission, it is claimed that it is void, and therefore furnishes no legal warrant for the detention of the prisoner. This objection is founded upon the terms of section 462 of the criminal practice act, which requires the clerk, in entering a judgment of conviction, 'to state briefly the offense for which the conviction has been had.' [64]
>
> "What the entry which contains the judg-

ment against a defendant in a criminal action ought regularly and properly to state, in order to fully satisfy the requirements of the law, is a question not at all difficult to answer. It ought to show that all the steps or acts required by the statute which regulates proceedings in criminal cases to be done at that stage of the case were performed. In cases where it is not lawful for the court to proceed to judgment in the absence of the defendant, as in felonies, it ought to show that the defendant was present in person. Criminal Practice Act, sec. 443. That he was informed by the Court or by the clerk under its direction of the nature of the indictment, of his plea, and if his plea was "not guilty" of the nature of the verdict; and that he was asked whether he had any legal cause to show why judgment should not be pronounced against him: Id., sec. 456. If cause is shown, the entry should show what it was and what disposition was made of it by the Court; and lastly the punishment or sentence imposed by the Court, which should be stated with sufficient certainty to enable the officer to execute it. If it is a judgment of imprisonment, the commencement and duration of the term, and the place of confinement, ought to be stated with certainty, if the commencement is stated at all; otherwise the judgment may be absolutely void. But the better practice is not to fix the commencement of the term, but merely to state its duration and the place of

confinement; Id., sec. 465. So in the case of a judgment of death, the judgment ought not to appoint the day of execution, but leave it to be appointed in the warrant; Id., sec. 466; 2 Bishops Criminal Practice. sec 879.

"But while all this ought regularly and properly to appear in the entry of judgment, it does not follow that the omission of some of them, or any of them, will render the judgment erroneous, much less valid.

"In England, an omission to state that the defendant was asked if he had any legal cause to show against the judgment, would be fatal on writ of error: I Chit. Crim. Law, 801. In the United States this question has been decided in various ways—some Courts holding that it would be error and others that it would not, even in capital offenses: Crady v. State, 11 Ga. 253; Sarah v. State, 28 Id. 576; West v. State, 22 N. J. L. 212; State v. Ball, 27 Mo. 324; Hamilton v. Commonwealth, 16 Pa. St. 129 (55 Am. Dec. 485); Safford v. People, 1 Park, Cr. 474; Dyson v. State, 26 Miss. 362; People v. Stuart, 4 Cal. 218. But I have been unable to find a single case, in England or America, where such an omission has been held sufficient to render the judgment absolutely void.

"Whether this judgment, then, is absolutely void or not is merely a question of jurisdiction. If it appears that the court had jurisdiction of the subject matter and the person of the defendant (it being a court of general jurisdic-

tion, proceeding according to the course of common law), the judgment is not void, however erroneous [65] it may be, unless it is so uncertain in its terms as to be void upon that ground. But no question of the latter character is made in this case. Said Mr. Chief Justice Marshall, in Ex parte Watkins, 3 Pet.. 202 "An imprisonment under a judgment cannot be unlawful unless that judgment be an absolute nullity; and it is not a nullity if the court has general jurisdiction on the subject." Such is the general rule. Does the statute, by requiring the offense to be stated, change or modify it? But I do not find it necessary, for the purposes of this case, to determine whether by reason of this provision of the statute, a judgment which is entirely silent as to the offense would for that reason be null and void; for while the entry in this case does not show the precise offense of which the prisoner was convicted, it shows that he was indicted for the crime of murder, tried and convicted of some offense under or within that indictment. It shows, therefore, a subject matter within the jurisdiction of the court. The only reason why, as I conceive—the judgment should show the offense is, that it may appear that the punishment inflicted is lawful, or in other words, that the court has not exceeded its power in that respect. Now, no conviction could have been had under the indictment in view of which the punishment of imprisonment for ten years

would have been beyond the power of the court to impose. There are only three offenses of which he could have been convicted; murder in the first degree, murder in the second degree, and manslaughter. For either of the last two the court had power to imprison for ten years If the conviction was for the first, the fact that the court imposed imprisonment instead of death as the punishment would not entitle the prisoner to his discharge. Where the prisoner was sentenced to the penitentiary on conviction for horse stealing for one year, the law requiring a sentence for such offense for a period of not less than three years, the error was held to afford no ground for discharge on *habeas corpus:* Ex parte Shaw 7 Ohio St. 81 (70 Am. Dec. 55). The Court said: 'The question is one simply of jurisdiction. The court had jurisdiction over the offense and its punishment, and while in the legitimate exercise of its power committed a manifest error and mistake in the award of the number of years of imprisonment. The sentence was not void, but erroneous.' Hence we have a case over which the court in any event had jurisdiction, and which it had not in any event exceeded its powers.

"In People v. Cavanagh, 2 Park. Cr. 660, the judgment showed that there had been a conviction for misdemeanor, without stating the particular offense, and called for an imprisonment for the period of thirty days. The stat-

ute in New York in relation to the substance of a judgment entry is the same as ours. On *habeas corpus* the Supreme Court held that the judgment was sufficient to hold the prisoner, on the ground that it showed a case within the jurisdiction of the court in which imprisonment for thirty days could be lawfully imposed, notwithstanding the precise offense for which he was convicted was not stated." [66]

In Pointer v. the United States, the Supreme Court of the United States, speaking through Justice Harlan on this point, says:

"The specific objection to the sentence is that it does not state the offense of which the defendant was found guilty, or that the defendant was guilty of any named crime. This objection is technical rather than substantial. The record of the trial preceding the sentence shows an indictment return to the court by grand jurors duly selected, empanelled, sworn and charged. * * * The indictment itself is given and it appears that the defendant was brought into court upon it; that he was tried upon the same indictment before a petit jury lawfully empanelled and sworn, and that a verdict of guilty as charged * * * was received and incorporated into the record of the trial. When, therefore, the defendant was brought into court and asked what he had to say 'why the sentence of law upon the verdict of guilty heretofore returned against him by the jury * * * should not be pronounced against him' all doubt

> as to the offense of which he was found guilty and on account of which he was sentenced, is removed. The sentence itself is in the record and the record shows everything necessary to justify the punishment inflicted While the record of a criminal case must state what will affirmatively show the offense, the steps, without which the sentence cannot be good and the sentence itself 'all parts of the record are to be interpreted together, effect being given to all, if possible, and a deficiency at one place may be supplied by what appears in another.''

For this reason, the objection last stated is not sustained. In the instant case the record shows that the petitioner was complained of for having in his possession, on December 1, 1921, intoxicating liquor, to wit, moonshine whiskey; that he was arrested and brought before the justice, pleaded not guilty, was tried by a jury, convicted and sentenced. The record is clear as to the crime of which he is charged and for which he was sentenced; and under the decision of the Supreme Court and the cases cited, it appears to me that the objection of counsel for petitioner to the sentence is no ground for his discharge on this writ.

The further ground is asserted by counsel that the judgment is void as being in excess of the jurisdiction of the justice. This objection is not tenable as being a ground for discharge. [67] It will be noted that the number of days, imprisonment set forth in the sentence is three hundred. The fine is 600. The statute fixes imprisonment at one day

for each two dollars of the fine. (See Sec. 192, Criminal Code).

Sec. 2299, Compiled Laws of Alaska, provides:

> "That a judgment that the defendant pay a fine must also direct that he be imprisoned in the county jail until the fine be satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every two dollars of the fine; and in case the entry of judgment should omit to direct the imprisonment and the extent therefor, the judgment to pay the fine shall operate to authorize and require the imprisonment until the fine is satisfied at the rate above-mentioned."

Under this sentence, imprisonment for the costs is not provided for.

As for the contention that the jurisdiction of the justice extends to only one year's imprisonment, I fail to find that our statute so provides. The jurisdiction of a justice is set forth in Sec. 2519, Compiled Laws of Alaska. I can find no more conclusive authority on this point than Ex parte Lang, 85 U. S. 163. In this case the statute provided that the penalty for the offense of which the petitioner was convicted was a fine or imprisonment, but the Court, in the first instance, imposed a sentence of fine and imprisonment. As to this judgment the Supreme Court, through that eminent jurist, Justice Miller, says:

> "The first judgment, though erroneous, was not absolutely void. It was rendered by a court which had jurisdiction of the party and

> of the offense on a valid verdict. The error of the court in imposing the two punishments mentioned in the statute when it had only the alternative of one of them, did not make the judgment wholly void."

In the matter of the *habeas corpus* proceedings before the Supreme Court, in the case In re Bonner, the error or excess [68] of jurisdiction of the Court in imposing sentence, is gone into by Judge Field in a very instructive opinion, and therein the Court says:

> "Where the Court is authorized to impose imprisonment and exceeds the time prescribed by law, the judgment is void for the excess."

In the case before us the judgment is not void, but may be void as to any excess, and the present time is not subject to collateral attack under a writ of habeas corpus. If the justice has jurisdiction to sentence the defendant for a year only, including the fine under the statutory calculation, the judgment would be void only as to the excess.

See Sec. 2299 and the proviso to Sec. 2301.
Compiled Laws of Alaska, and
Booth v. The U. S., 197 Fed. 287.

I am unable to see that the defendant is illegally restrained of his liberty by the United States Marshal for the reasons stated, and therefor the writ will be discharged and the petitioner remanded to the custody of the marshal for execution of the sentence of the Court.

THOS. M. REED,
Judge.

Delivered April 3, 1922.

Filed in the District Court, District of Alaska, First Division. Apr. 7, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [69]

[Caption and Title.]

No. 2169—A.

Petition for Appeal.

Harry Mabry, the petitioner and appellant above named, feeling himself aggrieved by the decision and final judgment given and entered on this 3d day of April, 1922, in the above-entitled cause, discharging the writ of habeas corpus and remanding the petitioner and appellant to custody and imprisonment under the pretended judgments of said Justice Court of the date of January, 9th, 1922, and of this District Court of the date of March 16th, 1922, as fully set out in the Return of the United States Marshal to the writ of habeas corpus in this case, does hereby appeal from said final judgment of this court, and from every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that his said appeal be allowed, and further prays that the bill of exceptions prepared and offered by him may be settled and allowed by this court.

HARRY MABRY,
Petitioner and Appellant.
WICKERSHAM & KEHOE,
Attorneys for Appellant.

Now, on this 5th day of April, 1922, the foregoing appeal is hereby allowed.

Done in open court this 5th day of April, 1922.

THOS. M. REED,
District Judge.

Filed in the District Court, District of Alaska, First Division. Apr. 5, 1922. J. H. Dunn, Clerk. By————, Deputy.

Service of a full, true and correct copy of the within Petition for Appeal is hereby acknowledged this 4th day of April, 1922.

GEO. D. BEAUMONT,
U. S. Marshal. [70]

[Caption and Title.]

No. 2169—A.

Assignment of Errors.

Comes now Harry Mabry, the appellant herein, and makes and files the following assignment of errors upon which he will rely in prosecuting his appeal in the above-entitled action;

I.

The Court erred in discharging the writ of habeas corpus and in making the order remanding this appellant to restraint and imprisonment as therein set out.

II.

The Court erred in holding the complaint in this case made by the Special Assistant U. S. Attorney

on January 9th, 1922, before the Justice Court at Sitka, Alaska and upon which this appellant was arrested, was sufficient or any authority to confer any jurisdiction on said Justice of the Peace to issue any warrant for the arrest of the appellant, or to put him on trial for any offense against the Act of Congress approved Feb. 14, 1917, entitled "An Act to prohibit the manufacture or sale of alcholic liquors in the Territory of Alaska, and for other purposes," or to render the, or any, judgment against the appellant under any charge for a violation of said Act of Congress or to order his imprisonment in any jail or any place, or to make the pretended judgment of January 9th, 1922, so pretended to be made by said Justice in this case. [71]

III.

The Court erred in holding that said complaint states any crime under said Act of Congress, or gave said Justice or District Court any jurisdiction over the person of this appellant; that said complaint does not state any probable cause on sworn information.

IV.

The Court erred in adjudging that the Justice Court in Sitka Precinct, First Division, Alaska, had jurisdiction to make the pretended judgment of January 9th, 1922, and the docket judgment of the same date therein, because it appears upon the face of said judgments, and each of them, that it was null and void for want of jurisdiction in said Justice Court to make and enter the same.

V.

The Court erred in holding that the pretended judgments set out in full in the return of the United States Marshal, defendant, in this case, as his warrant and authority for restraining and imprisoning this appellant as herein complained of, were either or both sufficient and valid, or any legal authority to the said Marshal so to restrain this appellant of his liberty or to imprison him in said jail at Juneau, Alaska, or any where, or at all.

VI.

The Court erred in adjudging that the imprisonment of this appellant by the said United States Marshal defendant herein, upon the said pretended authority set out by him in his return in this case to the writ of habeas corpus, was legal, and that the proceedings in said Justice Court whereby the said judgments were so made, were legal and in compliance with law, because it appears upon the face of the petition in this case, the writ, the return to the writ, and upon the whole record before the court: (1) That the said R. W. DeArmond, Commissioner and *Ex-officio* Justice of the Peace in said Sitka precinct, First [72] Division, Alaska, as aforesaid, had no jurisdiction or authority in law or otherwise, to render and make the pretended judgment so by him made and rendered in this case against the appellant on said January 9th, 1922, as aforesaid, because the said judgment is not based upon any crime defined by or known to the laws of the United States, or the Territory of Alaska, and

the pretended crime stated therein is not a crime known to or defined by said or any laws. (2) Said pretended judgment of January 9th, 1922, as aforesaid, being void for want of jurisdiction, and being so made in excess and outside of the jurisdiction of the said Justice Court, as aforesaid, all subsequent proceedings of said Justice Court, and of the District Court, based thereon, were each without jurisdiction and wholly void. (3) Said pretended judgment of January 9th, 1922, as aforesaid, being void for want of and in excess of the jurisdiction of the said Justice Court, all subsequent proceedings thereunder, both in said Justice Court and in this District Court, and the imprisonment and restraint of this appellant were and now are in violation of law and of this appellant's rights under the Fifth Amendment to the Constitution of the United States. (4) The complaint in said case against this appellant, made and verified on said 9th day of January, 1922, by H. D. Stabler, Special Assistant U. S. Attorney, was so made in violation of the provisions of Section 28 and other provisions of the Act of Congress entitled "An act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes," approved Feb. 14, 1917, 39 Stat. L., page 903, and was made without authority of law and in violation of said law and did not state facts sufficient to constitute any crime, or to give the said Justice Court jurisdiction to try and sentence this appellant as in said record stated. (5) That the pretended warrant so issued [73] by the

said Commissioner and *Ex-officio* Justice of the Peace in the Sitka Precinct, as aforesaid, on said January 9th, 1922, for the arrest of this appellant and upon which he was so arrested and restrained of his liberty, and so attempted to be brought within the jurisdiction of the said Justice Court, was and is void and illegal in this: that it is in direct violation of Section 2384, compiled Laws of Alaska, 1913, because it did not and does not now state or designate any crime therein alleged to have been committed by this appellant, and because the said Deputy Marshal had no authority thereby to arrest or to detain or imprison this appellant, and his said arrest and imprisonment thereunder and his detention in said court were illegal because said warrant was void and in violation of law. (6) That the pretended verdict rendered by the jury against this appellant in said Justice Court was and is null and void because it does not find the defendant guilty of any crime, and the same did not afford any jurisdiction to the pretended judgment and sentence so entered by the said Justice of the Peace thereon. (7) Because the pretended judgment so entered by the said Justice of the Peace in the case against this appellant, as aforesaid, was null and void for the further reason that it provided that this appellant should be imprisoned in the jail at Sitka until the costs of said case were paid; and that part of the said pretended judgment providing for his said imprisonment for costs has been imposed upon this appellant and the said judgment is wholly null and void for that reason

also. (8) Because the docket entries in the case against the appellant herein kept by the said Justice of the Peace and made a part of his petition show that the pretended crime charged against appellant and upon which the jury so returned said verdict, and the Justice so rendered said pretended judgment and sentence, was not a crime, and that the said Court had no jurisdiction to render any judgment and sentence against this appellant thereon [74] or at all. (9) Because it appears on the face of the pretended judgment aforesaid, entered by Justice in said Justice Court on January 9th, 1922, against appellant that said Justice had no jurisdiction or authority to sentence appellant to be imprisoned in jail four months, and an additional 300 days, as therein stated, because said periods exceed the jurisdiction of said Justice of the Peace to impose imprisonment, and said sentence was null and void. (10) Because it appears on the face of the order of the District Court in this case dismissing appellant's appeal from the said Justice Court to the said District Court, as herein described, was without authority of law, and the affirmance of the said pretended judgment of the said Justice of the Peace of January 9th, 1922, as aforesaid, was without jurisdiction and void, and all proceedings and orders entered in said cause in said District Court, as aforesaid, were null and void and without jurisdiction. (11) That the order of said District Court so made on March 16th, 1922, directing the issuance of a bench warrant for the arrest and imprisonment of this appellant was in

excess of the jurisdiction of the said District Court and its Judge, and null and void, and the arrest and imprisonment of this appellant being made and done under that warrant, was so done without the jurisdiction and is null and void. (12) That the pretended imprisonment of this appellant under said pretended judgment of January 9th, 1922, and the said pretended bench-warrant so issued by said District Court upon which this appellant was so arrested on March 24th, 1922, and is now imprisoned, was and is illegal and without jurisdiction or authority of law, and the said United States Marshal, defendant herein, is wholly without authority of law in restraining this appellant and imprisoning him as aforesaid. [75]

WHEREFORE the appellant, Harry Mabry, prays that the final judgment herein be reversed and that this Court shall grant the relief prayed for in appellant's Petition for Writ of Habeas Corpus, now before the Court.

JAMES WICKERSHAM,
J. W. KEHOE,
Attorneys for Appellant.

Filed in the District Court, District of Alaska, First Division. Apr. 5, 1922. John H. Dunn, Clerk. By W. B. King, Deputy. [76]

[Caption and Title.]

No. 2169—A.

Objections of United States Attorney to Appeal.

Comes now Arthur G. Shoup, United States Attorney, First Division, District of Alaska, to oppose the motion of said Harry Mabry, above-named appellant, that he be permitted to give a supersedeas bond for his release pending the appeal in this case, and for grounds of such opposition does file the following specifications:

First. This Court is without jurisdiction or authority to issue a bond for the release of said prisoner pending this appeal.

Second. No probable cause exists for grounds for said appeal.

Third. The affidavit filed with said motion for the purpose of showing good cause for such action is irrelevant and immaterial and sets up a collateral allegation not involved in or pertinent to said motion or said appeal, and should be stricken from the files herein.

Fourth. If it is within the authority of this Court to issue an order releasing said appellant on said bond, which said United States Attorney denies, the said bond should run to the United State as beneficiary and not to George D. Beaumont, United States Marshal, as the form submitted provides.

Said Arthur G. Shoup, further appearing, objects to specification numbered 11 in Assignment

numbered VI, said specification numbered 11 being in words and figures as follows: [77]

> "(11) That the order of said District Court so made on March, 16th, 1922, directing the issuance of a bench-warrant for the arrest and imprisonment of this appellant was in excess of the jurisdiction of the said District Court and its Judge, and null and void, and the arrest and imprisonment of this appellant being made and done under that warrant, was so done without the jurisdiction and is null and void."

and to specification numbered 12 in said assignment of error, the same being in words and figures as follows:

> "(12) That the pretended imprisonment of this appellant under said pretended judgment of January 9th, 1922, and the said pretended bench-warrant so issued by said District Court upon which this appellant was so arrested on March 24th, 1922, and is now imprisoned, was and is illegal and without jurisdiction or authority of law, and the said United States Marshal, defendant herein, is wholly without authority of law in restraining this appellant and imprisoning him as aforesaid."

for the reason that said specifications numbered 11 and 12 set up matter relating to an alleged bench-warrant and the arrest of said Harry Mabry thereunder, whereas in fact, as the record in this case reveals, no bench-warrant was ever delivered to the United States Marshal for the arrest of the said Harry Mabry, nor any arrest under such alleged

bench-warrant made as stated in said specifications numbered 11 and 12. Said assignment of error, therefore, sets up allegations that are not facts and do not conform to the record, and therefore should not be allowed.

A. G. SHOUP,
United States Attorney.

Service of copy admitted the 4th day of April, 1922.

J. W. KEHOE,
Of Attys. for Plff.

Filed in the District Court, District of Alaska, First Division. Apr. 4, 1922. J. H. Dunn, Clerk. By ————, Deputy. [78]

[Caption and Title.]

No. 2169—A.

Citation.

To GEORGE D. BEAUMONT, United States Marshal, Defendant and Appellee, and to ARTHUR G. SHOUP, United States Attorney:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, California, within thirty (30) days from the date hereof pursuant to an order allowing an appeal entered in the Clerk's office of the District Court of the Territory of Alaska, Division

Number One, thereof, at Juneau, in that certain action in which Harry Mabry is plaintiff and appellant, and George D. Beaumont, United States Marshal, as defendant and appellee, to show cause, if any there be, why the final judgment rendered herein against plaintiff and appellant, Harry Mabry, as in said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to him in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, and the seal of the District Court for the Territory of Alaska, Division No. One, this 5th day of April, 1922.

[Seal] T. M. REED,
Judge of the District Court for the Territory of Alaska Div. No. 1, at Juneau.

Attest: JOHN H. DUNN,
Clerk of Said Court.

Filed in the District Court, District of Alaska, First Division. Apr. 5, 1922. John H. Dunn, Clerk. By Wm. Guir, Deputy.

Copy of within citation received and due service thereof acknowledged this 4th day of April, 1922.

GEO. D. BEAUMONT,
United States Marshal, Defendant and Appellee.
[79]

[Caption and Title.]

No. 2169—A.

Motion for Supersedeas Bond.

Comes now Harry Mabry, the plaintiff and appellant in the above-entitled cause, and moves the Court that he be permitted to give a supersedeas bond for his release pending the appeal in this case; and in support of said motion appellant files herewith his affidavit for the purpose of showing good cause for such action.

HARRY MABRY,
By WICKERSHAM & KEHOE,
Attorneys for Appellant.

Copy of the within motion and affidavit and due service thereof is hereby acknowledged this —— day of April, 1922.

GEO. D. BEAUMONT.

Filed in the District Court, District of Alaska, First Division. Apr. 5, 1922. J. H. Dunn, Clerk. By ————, Deputy.

Sec. 765, R. S. 1878. Rule 33, Ct. Ct. of App. 9th Ct. [80]

Affidavit of Harry Mabry

Territory of Alaska,
City of Juneau,—ss.

Harry Mabry, being first duly sworn, on oath deposes and says: That he is the appellant named in the foregoing motion for leave to give supersedeas bond on appeal in the above-entitled cause;

that he is of the age of 42 years, and has been a resident of the Territory of Alaska for 22 years; that for 4 years he has been a resident of the town of Sitka, Alaska, and engaged in business there as a restaurant keeper; that he has a valuable business and considerable sums of money invested therein; that he is also indebted to other business men at Sitka for supplies and other goods furnished to him for use in said restaurant; that when affiant took his appeal from the decision of the Justice of the Peace in Sitka Precinct rendered against him he was allowed to give a bail bond for his release in the sum of twelve hundred ($1200.00) dollars which he was able to do by reason of his good standing and integrity as a business man in the said city of Sitka; that affiant came to Juneau on the 24 day of March, 1922, to attend the term of this court at which he was advised his appeal case would be tried; instead of being allowed to present his case upon the merits the Court dismissed his appeal for the want of a cost bond, and affiant was seized and put into jail without further notice; that affiant had a good defence to the charge against him, and had no doubt when he left Sitka to come to Juneau to attend said Court that he would be found not guilty upon said trial, and so left his business in Sitka under charge of a person engaged temporarily for a few days for that purpose; that this affiant's said business must be attended to at once by affiant in person or the whole of said business will be lost, and those to whom affiant owes money will also lose the same; that affiant has never been

convicted of a crime prior to this offense and his offense in this case is said to be based on taking a drink of liquor with friends in a private home; that it is *bona fide* the intention of the affiant to prosecute his appeal in this case to the Circuit Court of Appeals for the Ninth Circuit, and that affiant must [81] in the meantime close up his business and protect the interests of his creditors and that he can only do so upon being allowed to give a bail bond in this case and give his personal attention thereto.

HARRY MABRY.

Subscribed and sworn to before me this 4th day of April, 1922.

[Notarial Seal] J. W. KEHOE,
Notary Public for Alaska.

My commission expires Sept. 15, 1925. [82]

[Caption and Title.]

No. 2169—A.

Order Fixing Amount of Cost and Supersedeas Bond

This cause came on duly to be heard before the above-entitled Court at Juneau, Alaska, on the 4 day of April, 1922, upon the application of the above-named plaintiff and appellant to have the Court fix the cost and supersedeas bond on appeal in the above-entitled cause, and the Court having heard counsel, and being advised—

IT IS HEREBY ORDERED that the said cost and supersedeas bond be and the same is hereby fixed in this case on the appeal from the final judgment herein to the United States Circuit Court of Appeals for the Ninth Circuit at the sum of Two Thousand Dollars.

Done in open court this 5th day of April, 1922.

THOS. M. REED,
District Judge.

Filed in the District Court, District of Alaska, First Division. Apr. 5, 1922. John H. Dunn, Clerk. By ————, Deputy.

Entered Court Journal No. R, page 135. [83]

[Caption and Title.]

No. 2169—A.

Order Allowing Appeal, etc.

And now, to wit, on the fifth day of April, 1922, it is ORDERED that the appeal be allowed as prayed for.

And it is further ORDERED that said plaintiff and appellant, Harry Mabry, may, at any time pending said appeal, be enlarged upon executing a recognizance, with sureties in the sum of Two Thousand Dollars, to the satisfaction of the Clerk of this court, for his appearance to answer the judgment of the Court of Appeals, and upon failure thereof to give bail, to remain in the custody of the United States Marshal, First Division, Territory of Alaska, at Juneau.

Dated this 5th day of April, 1922.

THOS. M. REED,
Judge.

Due and timely service of the copy of the foregoing order is hereby acknowledged this 5th day of April, 1922.

A. G. SHOUP,
United States Attorney.

Filed in the District Court, District of Alaska, First Division. Apr. 5, 1922. J. H. Dunn, Clerk. By ————, Deputy.

Entered Court Journal No. R, page 135. [84]

[Caption and Title.]

No. 2169—A.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Harry Mabry, Plaintiff, and Lockie McKinnon and Abner Murray, sureties, are held and firmly bound unto the above-named appellee, George D. Beaumont, United States Marshal, in the sum of Two Thousand Dollars ($2000.00), for the payment of which to be well and truly made, we bind ourselves, and each of our heirs, executors and assigns, firmly by these presents. The condition of this obligation is such that

WHEREAS, the above-bounden Harry Mabry, has appealed to the Circuit Court of Appeals for the Ninth Circuit from judgment rendered against

him in the District Court for Division Number One, at Juneau, District of Alaska, on the 3d day of April, 1922, in that certain cause in which Harry Mabry is plaintiff and the said George D. Beaumont, United States Marshal, is defendant, discharging the writ of habeas corpus therein and remanding the above appellant, plaintiff below, to the custody of him, the said defendant, and whereas the above-named appellant has been ordered enlarged upon recognizance in the sum of Two Thousand Dollars ($2000.00);

NOW, THEREFORE, if the appellant shall prosecute his appeal to effect and answer all damages and costs if he fails to make his plea good and shall answer the judgment of the above-entitled Court, this obligation shall be null and void; otherwise to remain in full force and effect. [85]

IN WITNESS WHEREOF, We have have hereunto set our hands and seals this 5th day of April, 1922.

HARRY MABRY, (Seal)
Principal.
LOCKIE McKINNON, (Seal)
Surety.
ABNER MURRAY, (Seal)
Surety.

United States of America,
District of Alaska,—ss.

Lockie McKinnon and Abner Murray, being first duly sworn, depose and say, each for themselves and not one for the other; that he is the surety who

executed as such the foregoing bond; that he is not a counsellor or attorney at law, marshal, clerk of any court or other officer of any court; that he is a resident of the Territory of Alaska; that he is worth the sum of $2000.00, over and above all just debts and liabilities and exclusive of property exempt from execution.

LOCKIE McKINNON.

[Seal] ABNER MURRAY.

Subcribed and sworn to before me this 5th day of April, 1922.

JOHN H. DUNN,
Clerk of District Court.

The above and foregoing bond is hereby approved as to form and sufficiency of sureties this 5th day of April, 1922.

THOS. M. REED,
Judge District Court, 1st Division Alaska.

[Endorsed]: Bond. No. 2169—A. Harry Mabry vs. Geo. D. Beaumont, U. S. Marshal.

Filed in the District Court District of Alaska, First Division. Apr. 5, 1922. J. H. Dunn, Clerk. By W. B. King, Deputy. [86]

[Caption and Title.]

No. 2169—A.

Order of Release.

To the United States Marshal, District of Alaska, Division Number One:

Harry Mabry, who is detained by you upon a

charge of violation of the Alaska Bone Dry Law, having perfected an appeal in the above-entitled matter from the final order of this Court dismissing his petition for writ of habeas corpus, and having given sufficient bail to prosecute his appeal to effect and answer all damages and costs if he fails to make his plea good and to answer the judgment of the above-entitled Court and of the Circuit Court of Appeals for the Ninth Circuit and having been enlarged upon said bail, you are commanded forthwith to discharge him from your custody.

Dated at Juneau this 5th day of April, 1922.

THOS. M. REED,
Judge.

Copy received this 5th day of April, 1922.

A. G. SHOUP,
U. S. Atty.

Entered Court Journal No. R, page 136.

Filed in the District Court, District of Alaska, First Division, Apr. 5, 1922. John H. Dunn, Clerk. By L. E. Spray, Deputy. [87]

[Caption and Title.]

No. 2169—A.

Cost Bill.

Statement of disbursements claimed in the above-entitled cause, viz:

Clerk's Fees	$15.25
Marshal's Fees	$ none
Trial Fee	$
Costs in Lower Court	$
Advertising	$
Depositions	$
Attorneys' Fees	$
Attorney's Fee for taking —— depositions, at —— each	$
Master's Fees	$
Referee's Fee	$
Disbursements	$
Witness Fees	$
Total	$15.25

Filed in the District Court, District of Alaska, First Division. Apr. 10, 1922. John H. Dunn, Clerk. By W. B. King, Deputy.

United States of America,
Territory of Alaska,
Division No. 1,—ss.

I, H. D. Stabler being duly sworn, say I am the Sp. Asst. U. S. Attorney, for defendant U. S. Marshal in the above-entitled cause; that the costs and disbursements set forth above have been necessarily

incurred in the prosecution of this suit, and that defendant is entitled to recover the same from the plaintiff-petitioner.

H. D. STABLER,
For Defendant George D. Beaumont.

Subscribed and sworn to before me, this April 10, 1922.

[Seal] JOHN H. DUNN,
Clerk.
By Walter B. King,
Deputy Clerk.

Costs taxed at $15.25 this 10th day of April, 1922.

JOHN H. DUNN,
Clerk. [88]

[Caption and Title.]

No. 2169—A.

Stipulation Re Printing Transcript of Record.

It is stipulated between the attorneys for the parties respectively, that in printing the record in this case for use in the United States Circuit Court of Appeals for the Ninth Circut, all captions should be omitted after the title of the cause has been once printed, and the words "Caption and Title" and the name of the paper or document should be substituted therefor. All other parts of the record should be printed.

Dated this 11th day of April, 1922.

WICKERSHAM & KEHOE,
Attorneys for Plaintiff and Appellant.
A. G. SHOUP,
U. S. Attorney for Defendant and Appellee.

Filed in the District Court, District of Alaska, First Division. Apr. 11, 1922. John H. Dunn, Clerk. By L. E. Spray, Deputy. [89]

[Caption and Title.]

No 2169—A.

Praecipe for Transcript of Record.

To the Clerk of the District Court for the Territory of Alaska, Division Number One.

You will kindly prepare and transmit to the Circuit Court of Appeals for the Ninth Circuit in connection with the appeal herein copies of the following papers and documents herein:

1. Petition for writ of habeas corpus, with attached papers.
2. Order granting writ of habeas corpus.
3. Writ of habeas corpus.
4. Return to writ of habeas corpus.
5. Order discharging writ of habeas corpus.
6. Bill of exceptions.
7. Memo opinion on petition for writ of habeas corpus.
8. Petition for appeal.
9. Assignment of errors.

10. Objections of U. S. Attorney to appeal.
11. Citation.
12. Motion for supersedeas bond, affidavit attached.
13. Order fixing bond.
14. Order enlarging defendant (petitioner).
15. Bond.
16. Order of release.
17. Cost bill.
18. Stipulation.
19. This praecipe.

Due and timely service of a full, true and correct copy of the within praecipe hereby acknowledged this 11th day of April, 1922.

A. G. SHOUP,
U. S. Atty.

Filed in the District Court, District of Alaska, First Division. Apr. 11, 1922. John H. Dunn, Clerk. By L. E. Spray, Deputy.

WICKERSHAM & KEHOE,
Attorneys for Plaintiff & Appellant. [90]

In the District Court for the District of Alaska, Division No. 1, at Juneau.

United States of America,
District of Alaska,
Divison No. 1,—ss.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, John H. Dunn, Clerk of the District Court of Alaska, Division No. 1, hereby certify that the fore-

going and hereto attached ninety pages of typewritten matter, numbered from one to ninety, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of attorneys for plaintiff and appellant on file in my office and made a part hereof, in Cause No. 2169–A, wherein Harry Mabry is plaintiff and appellant and George D. Beaumont, United States Marshal, is defendant and appellee.

I further certify, that the said record is by virtue of the petition on appeal and citation issued in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificates, amounting to ($43.35) forty-three and 35/100 dollars, has been paid to me by counsel for appellants.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the above-entitled court this 13th day of April, 1922.

[Seal] JOHN H. DUNN,
Clerk.
By L. E. Spray,
Deputy.

[Endorsed]: No. 3866. United States Circuit Court of Appeals for the Ninth Circuit. Harry Mabry, Appellant, vs. George D. Beaumont, as

United States Marshal, for the Territory of Alaska, First Division, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed April 25, 1922.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.